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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 712

TRIANGLE IMPROVEMENT COUNCIL, ET AL., PETITIONERS

v.

WILLIAM S. RITCHIE, COMMISSIONER, STATE ROAD COMMISSION OF THE STATE OF WEST VIRGINIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (App. 65a–66a), the order denying rehearing *en banc* (App. 71a) and the dissent from that order (App. 72a–78a) are reported at 429 F. 2d 423. The opinion of the district court (App. 35a–59a) is reported at 314 F. Supp. 20.

JURISDICTION

The judgment of the court of appeals (App. 67a) was entered on May 14, 1970, and a petition for rehearing was denied July 14, 1970. The petition for a writ of certiorari was filed on September 17, 1970; it was granted

on December 21, 1970. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the finding of the district court that "[t]he evidence indicates that adequate relocation housing, on an open racial basis, will be available in the Charleston area for an orderly relocation of the displacees from an interstate highway corridor," is clearly erroneous.

2. Whether the Department of Transportation correctly construed the 1968 relocation amendments to the Federal-Aid Highway Act, and its own regulation promulgated thereunder, as not requiring that a formal relocation plan be submitted and approved for federally-aided highway projects on which rights-of-way had been acquired and persons displaced prior to the effective date of the 1968 amendments.

STATUTES AND REGULATIONS INVOLVED

Section 123 of Title 23, the Federal-Aid Highway Act of 1962 (23 U.S.C. 133), provided in pertinent part as follows:

> (a) As used in this section the term "eligible person" means any individual, family, business concern (including the operation of a farm) and nonprofit organization to be displaced by construction of a project.
>
> (b) The Secretary prior to his approval of any project under section 106 of this title for right-of-way acquisition or actual construction shall require the State highway department to give satisfactory assurance that relocation advisory

assistance shall be provided for the relocation of families displaced by acquisition or clearance of rights-of-way for any Federal-aid highway.

(c) The Secretary shall approve, as part of the cost of construction of a project on any of the Federal-aid highway systems, such relocation payments as may be made by a State highway department, or a local public agency acting as an agent for the State highway department for this purpose, to eligible persons for their reasonable and necessary moving expenses caused by their displacement from real property acquired for such project. However, the Secretary shall not require a State to pay relocation payments where not authorized by State law.

(d) Payments under this section shall be subject to such rules and regulations as may be prescribed by the Secretary, and shall not exceed $200 in the case of an individual or family, or $3,000 in the case of a business concern (including the operation of a farm) or nonprofit organization. In the case of a business (including the operation of a farm) and in the case of a nonprofit organization, the allowable expenses for transportation under this subsection shall not exceed the cost of moving 50 miles from the point from which such business or organization is being displaced. Such rules and regulations may include provisions authorizing reimbursement for payments made to individuals and families of fixed amounts (not to exceed $200 in any case) in lieu of their respective reasonable and necessary moving expenses.

(e) This section shall apply only with respect to projects approved under section 106 of this title after the date of enactment of this section.

The Federal-Aid Highway Act of 1968 (23 U.S.C. (Supp. V) 501, *et seq.*, 82 Stat. 830), and the 1970 amendments thereto (Pub. L. 91–605, § 117), are set forth in Appendix A to this brief at pp. 53–64, *infra*.[1] Relevant portions of the Instructional Memorandum of September 5, 1968, and the various pertinent circular memoranda issued by the Department of Transportation under the 1968 Act, are set forth in Appendix B to this brief at pp. 65–89, *infra*.

STATEMENT

This suit was commenced as a class action on December 3, 1968, by the Triangle Improvement Council (an organization of residents in the so-called Triangle area of Charleston, West Virginia), and several of its members (App. 11a–13a). It sought injunctive and declaratory relief to prevent respondents[2] from proceeding with construction of a section of two federally-aided highways—Interstate Highways I–64 and I–77[3]—

[1] The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (hereafter referred to the "Uniform Relocation Assistance Act of 1970"), which was enacted on January 2, 1971, repealed Chapter 5 of Title 23 (Section 220(a)(10); Pet. Supp. Br. App. 10). However, Section 220(b) of Act provides: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section" (Pet. Supp. Br. App. 10).

[2] Respondents include the City of Charleston, West Virginia, officials of the State of West Virginia, the Secretary of Transportation and two subordinate officials of the Department of Transportation (App. 13a–14a).

[3] The two Interstate routes converge on the Charleston area, I–77 running north-south from Cleveland, Ohio, to the south-eastern United States, and I–64 running east-west from coast to coast (App. 42a). They intersect inside the city limits of Charleston.

through the Triangle, which is inhabited primarily by low-income Negroes. Among other things, petitioners charged that respondents had failed to comply with the 1968 statutory and regulatory requirements for relocation of residents to be displaced by the highway (App. 16a–17a).

Prior to trial, the district court ruled that insofar as the suit sought to attack the basic decision relating to the routing of the highway, made final in August 1964, it was barred by laches (App. 39a).[4] The issues were thus narrowed to whether the Constitution, statute, or pertinent regulations required that a formal relocation plan be submitted and approved as a condition to the approval of federal financial aid for this highway project.[5] After a full trial, the district court held, in a lengthy opinion (App. 35a–59a), that there was no such requirement. The court of appeals affirmed *per curiam* on the opinion of the district court (App. 65a–66a).

1. On August 20, 1964, the West Virginia State Road Commission, on the basis of extensive studies and two separate public hearings held in Charleston in March 1960 and June 1964,[6] requested federal approval for the

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Throughout this brief, both highways will hereafter be referred to as "I–77."

[4] The issue has since been abandoned by petitioners and is not now a question before this Court (Pet. Br. 17–18).

[5] The project in question is being built as a federal-state venture under the Federal-Aid Highway Act, 23 U.S.C. 101, *et seq.*, which authorized federal grants to the states of 90 percent of highway costs to facilitate "the prompt and early completion of the National System of Interstate and Defense Highways * * *." 23 U.S.C. 101(b), 120(c).

[6] Under the statute as it then provided, the states "to the greatest extent possible" select the different routes, subject to the ap-

present route of highway I–77 through the Charleston area (App. 41a). At that time certain state "assurances" relating to relocation assistance for those to be displaced by the proposed routing were submitted (App. 152a–155a), pursuant to 23 U.S.C. 133, and it is unquestioned that these complied fully with the then applicable statutory standard (App. 43a).[7] The Bureau of Public Roads gave approval on August 31, 1964 (App. 357a).[8] The route selected covers a distance of approximately 4.8 miles, and involves two separate Interstate projects of the State Road Commission (App. 132a), for convenience designated in these proceedings as "Project A" and "Project B." A portion of each of these projects lies outside the Triangle area, but both penetrate the

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proval of the Secretary of Transportation (23 U.S.C. 103(d)). The Act required that a state highway department submitting plans for a route "involving the bypassing of, or going through, any city, town or village * * * shall certify to the Secretary that it has had public hearings * * * and has considered the economic effects of such a location." 23 U.S.C. 128(a).

[7] Section 133 required that "the State highway department * * * give satisfactory assurance that relocation advisory assistance shall be provided for the relocation of families displaced by acquisition or clearance of rights-of-way for any Federal-aid highway."

[8] The Bureau of Public Roads, which administers the Federal-aid Highway Program, was then a part of the Department of Commerce. The Secretary of Commerce had delegated his authority to perform most of the functions vested in him under the Act to the head of the Bureau, the Federal Highway Administrator. 25 Fed. Reg. 4162, 4166 (1960). Under the Department of Transportation Act of 1966 the Bureau of Public Roads was transferred to the new Department of Transportation (49 U.S.C. (Supp. V) 1655(a)(1)), and federal approvals of Interstate highway routing are now the responsibility of the Secretary of Transportation.

area at different locations and meet within the Triangle at Young Street (App. 208a–209a).[9]

Following federal approval of the route, state highway officials proceeded to complete the necessary steps under the regulations (*FHWA Policy and Procedure Memorandum* 21–5) to obtain authorization for right-of-way acquisitions on Projects A and B. It is undisputed that proper right-of-way surveys, plans, and specifications relating to each project were submitted to the Bureau of Public Roads by the State Highway Right of Way Division (App. 135a–136a). Between April 19, 1966, and May 23, 1967, the Bureau of Public Roads, pursuant to 23 U.S.C. 106, authorized four separate right-of-way acquisitions, together covering all parcels of land in Project A; a similar single authorization for Project B was given on November 30, 1966 (App. 199a, 229a–231a).

The exact number of properties acquired, optioned or condemned by the state prior to August 23, 1968, the date of enactment of the pertinent relocation amendments, or prior to September 5, 1968, the issuing date of the Department regulation relating to formal relocation planning, is unclear from this record (App. 143a–144a, 147a–148a). The record shows that several hundred properties—or approximately 60 percent of all the right-of-way—had been acquired over the 2-mile length of Project A as of the time of trial (App. 143a) and that

[9] Project A, identified as I–77–3(66)100 (App. 142a), ran from Newhouse Branch to Young Street (App. 208a), a distance of approximately 2 miles. Project B, identified as I–77–3(67)98 (App. 142a), ran from Jefferson Street to Young Street (App. 208a), a distance of some 2.8 miles. See Volpe's Ex. 4.

an estimated 200 properties—or approximately 60 percent of the right-of-way—had been acquired in Project B well before that date (App. 147a).[10]

2. The relocation amendments here in question were added to the Federal-Aid Highway Act on August 23, 1968. 23 U.S.C. (Supp. V) 501 *et seq.* Essentially, they provide that any person displaced by a federal-aid highway project after that date "may elect to receive actual reasonable expenses in moving himself, his family, his business, or his farm operation, including personal property" (23 U.S.C. (Supp. V) 505). If a property owner, he is entitled to a payment from the state, in addition to the acquisition price of the property taken, of up to $5,000, representing the difference between the acquisition price and the cost of obtaining a comparable dwelling (23 U.S.C. (Supp. V) 506(a)). A tenant may receive a payment not to exceed $1,500, to enable him to rent for a period of two years, or make the down payment on the purchase of, "a decent, safe, and sanitary dwelling * * *" not less desirable than his existing one (23 U.S.C. (Supp. V) 506(b)). All such relocation payments by the states are to be reimbursed by the federal government as a part of the cost of construction of the highway (23 U.S.C. (Supp. V) 504).[11]

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[10] Throughout the trial, the term "acquisitions" was defined as the "process of acquiring title, either legal or equitable to the real property" (App. 144a). The estimated 200 acquisitions in Project B had taken place prior to August 23, 1968 (App. 147a). Within the Triangle area, nine parcels had been acquired by August 23, 1968, and nineteen acquisitions had been completed by the time of trial (Pl. Ex. No. 4).

[11] Under prior law the Secretary could reimburse the State as part of the construction cost of the highway, in limited amounts of up to $200 in the case of an individual or family, and $3,000 in

By the explicit terms of the statute (23 U.S.C. (Supp. V) 504(b)), these payment provisions apply to any resident in a project area whose property had not yet been acquired by the date of enactment. Thus, the increased relocation payments have been made to all displacees who were still living in the two projects on August 23, 1968 (App. 183a–187a); petitioners have raised no issue of non-compliance with this aspect of the 1968 amendments (App. 204a–205a, 213a).

The amendments further provide (23 U.S.C. (Supp. V) 502) that the Secretary may not approve, for federal aid purposes, any Interstate highway "project" [12] submitted by a state "unless he receives satisfactory assurances from the State highway department" that the relocation payments described above, and relocation assistance programs complying with 23 U.S.C. (Supp. V) 508,[13] will be undertaken, and also that (23 U.S.C. (Supp. V) 502(3)):

> within a reasonable period of time prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not

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the case of a business, for reasonable moving expenses (23 U.S.C. 133).

[12] The term "project" is defined in the statute as "an undertaking to construct a particular portion of a highway * * *" (23 U.S.C. 101).

[13] The relocation assistance program must include "such measures, facilities, or services as may be necessary or appropriate" (1) to determine the needs of potential displacees, (2) to assure, prior to displacement, the availability of adequate relocation housing meeting the Secretary's standards for "decent, safe and sanitary dwellings," (3) to assist in relocating displaced businesses and farm operations, and (4) to supply information concerning state or federal programs designed to assist displaced persons. 23 U.S.C. 508.

> generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the Secretary, equal in number to the number of and available to such displaced families and individuals and reasonably accessible to their places of employment.

On September 5, 1968, the Department of Transportation issued Instructional Memorandum 80–1–68, setting forth revised policies and procedures to be followed under the new 1968 relocation amendments (see App. B 65–83, *infra*). With respect to Federal-aid highway projects authorized on or before August 23 1968, the Memorandum was applicable only to those "on which individuals, families, businesses, farm operations, and nonprofit organizations [had] not been displaced" (see App. B 66, *infra*). In addition, paragraph 5 thereof, calling for specific assurances from the State of an adequate relocation assistance program, was explicitly limited to the situation where no "authorization to acquire right of way or to commence construction [had] been given prior to the issuance of this memorandum" (see App. B 69, *infra*). Paragraph 7 of the Memorandum, providing for the preparation and submission by state highway departments of formal relocation plans, was similarly restricted to projects where such plans could be furnished to the federal division engineer "prior to proceeding with right-of-way negotiations and/or construction" (see App. B 73, *infra*).

In further explanation of these relocation planning provisions, the Department of Transportation issued a

circular on February 12, 1969, stating that "[i]n accomplishing the planning for the relocation program required under paragraph 7, the State should undertake such planning on all active projects to the extent that it is reasonable and proper" (App. B 86, *infra*). It noted, however, that the actual submission of a formal plan to the district engineer was necessary only "at any time an authorization is requested which would require * * * relocations" (App. B 87).

With respect to projects for which further authorizations were no longer needed, the circular stated (*ibid.*): "regardless of the information furnished at this stage of the project it is the responsibility of the State to furnish relocation assistance * * * in accordance with the requirements of law and the Im [Instructional Memorandum]." A subsequent circular, issued by the Department of Transportation on April 10, 1970, stated (see App. B 89, *infra*):

> The division enginer shall not authorize any phase of construction (clearance of right-of-way regardless of how performed is considered to be a construction phase insofar as this memorandum is concerned) which would require the displacement of individuals or families, or permit the dislocation of individuals or families on any such project or on any project already authorized, until such time as the person being relocated has either by himself obtained and has the right of possession of adequate replacement housing or the State offers him adequate replacement housing which is available for immediate occupancy.

3. In the instant case, the record does not show the number of persons within the two projects who had relocated prior to the effective date of the 1968 amendments (App. 148a, 193a). Figures as of February 28, 1969, however, indicate that 913 persons within Project A had by then relocated, while about 380 persons still remained (App. 193a, 214a); in Project B, the number relocated as of that date was 401, with 496 persons remaining (App. 214a). Of the 326 persons originally residing within the Triangle area, apparently 42 had relocated by February 28, 1969 (which included 17 families (App. 100a)), and 284 still remained in the two project corridors (App. 148a, 194a–195a).[11]

None of those who had moved had been forced to do so (App. 377a–378a). To the contrary, the state policy had consistently been to relocate those who had to be displaced by the highway "[o]ver the period of time it takes to see that every one of them is offered safe and sanitary and decent housing so that no one is forced to move until they have these accommodations available" (App. 407a). To accomplish this objective, the state had, at the outset, "established a relocation office" within the Triangle area (App. 214a, 370a). According to the testi-

[11] A breakdown of these figures at trial (App. 194a–195a) showed that of the 284 persons then remaining in the Triangle area, 104 lived in the Project A right of way (thus comprising about one-third of the total number still in that corridor) and 180 lived in the Project B right of way (thus comprising a little over one-third of the total number remaining in that corridor). At the time of trial, there remained to be relocated in this area fifty-nine family units (App. 100a), eighteen of which were white (App. 380a), and 116 individuals (App. 100a).

mony of Mr. Colan, the Director of the Right of Way Division for the State Road Commission (App. 370a),[15] "nine to ten people [were] assigned full time to relocation"; two or three of these did "nothing but inspect" available rental housing to insure that "it is safe, decent and sanitary and conforms to the regulations." Moreover, the office had conducted a survey of the people residing in the two subject projects to learn "where they want to relocate, where they would like to move to, what their incomes are and family types, the business where they worked, where they go to church" (App. 370a). An "up-dated" listing "of all the housing * * * available for sale or rent" (*ibid.*) was maintained, and, if potential displacees were interested in seeing an available rental, the office would, if necessary, arrange to "pick them up in cars, take them and show them the property" (App. 371a). It would "make arrangements for any deposit they have to make to get in, [and] give them priority certificates if they want in public housing" (*ibid.*).

At trial, there developed an apparent controversy over whether there were sufficient available units of adequate replacement housing in the area. Testimony by petitioners' principal witness, Mr. Abeles, suggested a severe shortage of housing in Charleston (App. 299a). His as-

[15] The trial judge stated he was "very much impressed" by this witness and had "no hesitancy whatsoever in saying I think the State of West Virginia is quite fortunate to have him heading up this particular division." The judge added: "He indicated to me that he was a dedicated man who is carrying out a very, very difficult task in all good conscience and with a degree of solicitude for the impact that this program makes upon all people" (App. 439a).

sessments were based on a 1960 census report showing a 2.7 percent effective vacancy rate for the area,[16] which signified, he said, that "in effect you have no relocation housing on the private market, on the total market available" (App. 299a). It was his opinion that between 1960 and 1966, this housing problem "had increased in severity" (App. 299a–300a). He also testified that, essentially on the basis of the 1960 census figures (App. 317a), he had formed the opinion that the housing market in Charleston was racially closed ((App. 305a).[17] He admitted, however, that the figures on which he relied had been prepared at a time when the City of Charleston did not have an open housing ordinance (App. 317a).[18]

[16] The "effective vacancy rate" was described as the "number of units from the total stock which are empty, which are actually available, not counting those which are vacant but ready to be torn down or vacant but leased to somebody else or vacant and seasonal housing but actual number of units which a person can go and shop for on the open market" (App. 299a).

[17] This conclusion rested largely on information shown on a "map of the City of Charleston, West Virginia," prepared by this witness, which was based on "the United States Census, 1960" (App. 304a–305a).

[18] The Charleston Human Rights Act (City Ord. No. 975, Art. 79, Pt. 9, Streets and Public Services Law) was passed on November 6, 1967. It prohibits, *inter alia*, discrimination against any person because of "race, religion, color, national origin or ancestry" in the sale or rental of "any housing accommodations or real property or part or portion thereof" (Section 9(g)). It excepts from this provision "(A) the rental of a dwelling, or a portion thereof, containing accommodations for two, three or four families, one of which accommodations is maintained by the owner at the time of rental as the household of his family or (B) the rental of a room or rooms in a single family private dwelling or room in any apartment sublet by the owner or tenant of said apartment to another person or persons by the owner or occupant of such accommodation in which he or members of his family reside." Sec-

Testimony by the state highway officials, on the other hand, presented quite a different picture. On the basis of a study undertaken in February 1969 (App. 99a–126a, 363a), the turnover rate for three public housing projects in the Charleston area exceeded 25 percent in both 1967 and 1968[19] (App. 253a). In addition, at the time of the study a combined total of "approximately 250" (App. 368a) single rooms were available at acceptable rates in six hotels (App. 113a–114a), each "within a mile of the Triangle district" (App. 368a).[20] And some 80 more private units were generally available for occupancy on any given day (App. 101a, 195a, 367a, 395a), at an approximate average monthly rental of $90.00 (App. 112a).[21]

Mr. Mozena, the Executive Director of the Charleston Housing Authority, testified that the rent charged per unit in the three public housing projects was set at 20

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tion 3(k); see State Resp. 1a App. This open housing law is thus virtually identical in its coverage to the similar federal statute enacted in 1968. 42 U.S.C. 3601 *et seq.*

[19] The total number of turnovers for the three projects exceeded 230 units each year (App. 264a–267a). In 1967, the turnovers were 30 one-bedroom, 148 two-bedroom, 36 three-bedroom and 31 four-bedroom units; in 1968 the breakdown of turnovers was 27 one-bedroom, 133 two-bedroom, 30 three-bedroom, and 29 four-bedroom units.

[20] All the rooms met the decent, safe and sanitary housing standard (App. 396a). Four of the six hotels did not lie within the proposed Urban Renewal Project for the Triangle area (App. 396a). The other two were included in the 1969 study because the Urban Renewal Project was then still in the planning stages and there seemed "nothing very encouraging about its immediately appearing" (App. 397a).

[21] The 1969 study also indicated the number of houses that were listed for sale in and around the Charleston area, ranging in price from $5,000 to $25,000 and higher (App. 115a–126a).

percent of the family's net income, with a minimum rent of $25.00 (App. 254a). Available units were assigned on a priority basis which, "as a practical matter," he said (App. 253a), gave "displacees from the highway development" a first priority.[22] At the time of trial, the evidence showed that highway displacees had the top priority and were expected to retain it in the near future (App. 252a–253a).[23] On this basis, Mr. Mozena testified that the waiting period for such housing for those applying from the Triangle area would be "thirty to sixty days" (App. 253a). He further stated that in selecting tenants for any of the three housing projects, there could be "no discrimination because of race, color, creed or national origin" (App. 253a). Mr. Colan, the Director of the State Right-of-Way Division, testified that on the basis of his "experience in relocating people in

[22] The order of displacement priorities is as follows: "(1) displaced by natural disaster; (2) a low-rent housing project; (3) a public slum clearance; (4) redevelopment or renewal project; (5) public roads, bridges, et cetera; (6) enforcement of housing codes; (7) servicemen or servicemen's families, the head of which has been reassigned; (8) other families" (App. 250a).

[23] Petitioners' principal witness, Mr. Abeles, took issue with this analysis on the ground that a hypothetical 150 families might be displaced each year by "natural disaster" (App. 321a) and another large number might be displaced by "new public housing" (App. 326a); all such displacements, if they in fact occurred, would, of course, have priority over highway displacements. The proposed urban renewal plan had not been approved for the Charleston area at the time of trial (App. 397a); however, subsequent to proceedings in the district court, an urban renewal plan was approved by the Department of Housing and Urban Development and we are advised that acquisitions of property under that plan are just now beginning.

Charleston, relocating about 2,000 total in the last two years," he had not found "any significant racial discrimination in Charleston" (App. 393a).

Drawing on that experience, and on the 1969 study of available housing in and around Charleston, Mr. Colan concluded that "there is no serious problem involved in relocating all individuals and families from the Triangle area in accordance with the new 1968 Highway Act into accommodations that meet all of its specifications * * * [a]nd all of its regulations" (App. 369a). Mr. Saunders, the Division Right of Way Officer of the Bureau of Public Roads, shared this opinion. He testified that his office had reviewed approximately 512 relocation cases on some fifty highway projects in the State of West Virginia in 1967 and 1968 and had "generally found the relocation aspects to be completely adequate in all respects" (App. 210a). On the two projects discussed here, his office reviewed "a combined total of approximately 125 relocations and [was] satisfied with those" (*ibid.*).[24] While all these relocations were under the 1962 Act, Mr. Saunders emphasized that the State Road Commission "was providing all that was required and probably then some * * *" (*ibid.*). He stated: "I personally consider it in total as a very progressive right of way department * * * their relocation section is particularly aggressive" (App. 212a). And, he added, "I don't believe we ever took exception to a

[24] The number of cases reviewed by Mr. Saunder's office appears to be 133. In Project A, 75 relocation records of the state were reviewed; in Project B, 48 relocation records were reviewed (App. 182a).

"single relocation" (App. 213a). On this basis, he concluded (App. 176a):

> They have to my satisfaction, based on the two years' experience that I have had in this office closely watching their whole right of way operations, satisfied me that they can relocate the people in the Triangle area and other areas.

4. No state assurances specifically relating to Projects A and B on highway I–77 were furnished to the Secretary under the 1968 Highway Act, or under Paragraph 5a of the implementing Instructional Memorandum (App. 203a).[25] Also, no formal relocation plan for either project was submitted under paragraph 7 of the Instructional Memorandum (App. 198a, 209a, 415a).[26]

The district court held that the failure to provide such information violated neither the statute nor the regulations. It concluded (App. 54a–55a) that "Congress could not have intended that projects authorized and approved several years prior to enactment of the 1968 statute were to be subject to inflexible and strict compliance therewith." It also noted (App. 55a) that the federal officials had explicitly de-

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[25] The state did furnish, on request from the Bureau of Public Roads, general assurances concerning the statewide relocation program in West Virginia, but they did not relate specifically to either of these projects (App. 204a–206a).

[26] Prior to enactment of the 1968 legislation, the state prepared and submitted to the Bureau of Public Roads a survey relating to persons to be dislocated in the Charleston area, but it did not contain information relating to the availability of replacement housing (App. 167a–168a). Such information was later submitted in 1969 (App. 99a–126a), but this study related only to the Triangle area (App. 209a, 379a) and was not intended as a "Paragraph 7" relocation plan for either of the two subject projects.

termined "that the West Virginia authorities can meet, are meeting, and will continue to meet the requirements of the regulations and statutes in its relocation program."

The court ruled that that program suffered no constitutional infirmity under the Fifth and Fourteenth Amendments. It specifically held that "[t]he evidence indicated that adequate relocation housing, on an open racial basis, will be available in the Charleston area for an orderly relocation of the displacees from the interstate highway corridor" (App. 57a). Thus, petitioners' "allegations relative to the relocation assistance program on both statutory and constitutional grounds" were rejected as "without merit" (App. 59a).

The court of appeals affirmed *per curiam* (App. 65a–66a), and denied a petition for rehearing *en banc* (App. 71a), two judges dissenting (App. 72a–78a).

5. Subsequent to the proceedings in the district court, the petitioners who at that time still remained within the right of way corridors of Projects A and B (*supra*, p. 12) proceeded, with the assistance of the State Road Commission, to relocate outside the highway area. At the present time, we have been advised that this aspect of the relocation program is virtually completed. Of the original 284 persons to be displaced, apparently only 9 individuals remain on the two projects, representing less than four percent of the total displacement;[27] more-

[27] All relocations have taken place without the institution of a single eviction proceeding.

over, we are advised that only 3 or 4 of those remaining have yet to find suitable relocation housing. On November 6, 1970, Under Secretary of Transportation Beggs announced that "[t]he demolition of buildings in the Triangle Area in order to prevent vandalism, occupation by squatters, and in the interest of public health, may be authorized at the discretion of the Division Engineer as the relocation of persons is accomplished". (Pet. Br. App. B, p. 46). We are advised that substantially all the vacant dwellings have now been demolished in the Triangle area and that there remain standing in that part of the highway corridor (including both projects) 13 structures, only 5 of which are still occupied.

SUMMARY OF ARGUMENT

Petitioners instituted this suit to enjoin construction of two federally-funded Interstate highway projects within the Triangle area of Charleston until the state submitted to federal authorities a satisfactory formal plan of relocation for those to be displaced. There were then 284 persons within the approved right-of-way corridors who lived within the Triangle. The state has since helped to relocate virtually all of these individuals and we are advised that there now remain but 9 persons to be displaced, only 3 or 4 of whom have yet to locate adequate relocation housing.

In the changed posture of this case, the issues relating to the proper construction of the Federal-Aid Highway Act of 1968, and regulations thereunder, have become largely academic and there is no occasion for this Court to resolve them. If, as petitioners claim, some persons have been moved into inadequate housing, ques-

tions relating thereto can be litigated in some other proceeding.

I

The constitutional question petitioners raise under the Fourteenth Amendment is dependent on their assertion that adequate relocation housing will not in fact be available in Charleston on an open racial basis. The district court explicitly ruled to the contrary and the court of appeals affirmed on the opinion of the district court. While the record shows a few instances of private racial discrimination in the housing market in Charleston, it does not show or even suggest state involvement in such activity. To the contrary, both the City of Charleston and the Congress of the United States have enacted legislation designed to prevent and alleviate private discrimination in housing. There is, consequently, no substantial constitutional issue in this case.

II

Petitioners' contentions regarding the necessity for submission of a formal relocation plan for these projects involve only the applicability of certain provisions of a Department of Transportation memorandum to projects under way when the statute was passed in August 1968. That memorandum, by its terms, requires such plans only with respect to projects in which significant displacement of persons had not taken place prior to the effective date of the 1968 legislation. This is the interpretation given to the pertinent language by those federal officials who participated in drafting the underlying policy. It is supported by, and entirely

consistent with subsequent Department memoranda relating to procedures to be followed in providing relocation assistance to prospective displacees.

On the two projects here in question, the route had been finally approved, the right-of-way in each corridor partially acquired and a number of persons already displaced by August 1968. Even without a formal plan, the State Road Commission had been providing to displacees, both within the Triangle and outside it, essentially all relocation benefits required under the 1968 amendments. There is therefore no basis in law or fact for granting petitioners the relief they now seek.

ARGUMENT

INTRODUCTION

The posture of this case has changed drastically since the suit was instituted more than two years ago. At that time there were approximately 876 persons living within the approved rights-of-way of the two state "projects" involved in the Charleston section of highway I–77; 284 of them were residing within the Triangle area. The state relocation program has since successfully relocated substantially all of these individuals,[*] and there now remain but 9 persons in the Triangle to be displaced, only 3 or 4 of whom have yet to locate adequate relocation housing (*supra*, pp. 19–20).

The issues litigated in the district court and raised again here relate solely to whether, on state highway

[*] The total number of persons displaced on these two projects to date is approximately 2,084; 1,314 of these had relocated at the time the case was tried in the district court (*supra*, p. 12).

Projects A and B, the State Road Commission was required under the 1968 statute and regulations to submit to federal authorities a formal plan of relocation. In the present circumstances, these questions are largely academic; even petitioners no longer seriously contend that such a plan is needed for the handful of persons remaining in the Triangle area (Pet. Br. 50–52). This Court has consistently declined to adjudicate constitutional and statutory issues in the abstract (see, *e.g.*, *Ashwander v. United States*, 219 U.S. 346; *Poe v. Ullman*, 367 U.S. 497, 503–504) or where developments after initiation of the action have eliminated the need for further judicial inquiry (see, *e.g.*, *Golden v. Zwickler*, 394 U.S. 103, 108–109; *Fortson v. Toombs*, 379 U.S. 621). As this Court explained in *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U.S. 249, 264, review is appropriate only "so long as the case retains the essentials of an adversary proceeding, involving a real, not a hypothetical, controversy * * *." Cf. *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 345–348 (Brandeis, J., concurring). Even where the issues originally presented may not technically be moot,[29] there is reason to invoke this "principle of prudent restraint" (*Sanks v. Georgia*, No. 23, this Term, decided February 23, 1971, slip op. 8) where it appears unlikely that further adjudication "would now be material to any further litigation that might ensue" in related proceedings (*id.*, slip op. 6).

This case does not challenge activity of state or federal officials which is by nature continuous or recurring.

[29] Arguably, the issues in the instant case will not be moot until the last person to be displaced from the Charleston section of the highway I–77 has relocated.

Compare *Carroll* v. *Princess Anne*, 393 U.S. 175, 178–179. It attacks only specific procedures followed in the planning stages of a particular relocation program, identified with a particular federal-aid highway project.[30] At most, the issues retain vitality only as long as there remains a need for the type of planning petitioners now seek: the projects, however, are well beyond that point. Petitioners concede that the question "whether people have been relocated to decent, safe, and sanitary housing as required by federal statute" (Pet. Br. 17 n. 49) is not in this case.[31] If, as petitioners seem to suggest (Pet. Br. 51), some Triangle displacees have actually been moved "into demonstrably inadequate housing," that is a factual issue to be resolved in separate proceedings in the district court. It should not now be litigated in the instant suit involving different issues and different parties. We seriously doubt that the Department of Transportation would be a proper

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[30] As a practical matter, the issue is a nonrecurring one of diminishing importance. As petitioners correctly point out (Pet. Br. 28–29), of the 9,000 miles of the Interstate highway system not fully constructed, or under construction, in August 1968, 8,500 miles were then either in the engineering design stage or had just begun the right-of-way acquisition stage (see *infra*, pp. 34–36); right-of-way acquisitions had not yet commenced nor had people been displaced on the projects comprising substantially all of this 8,500 miles of unfinished roadway as of the effective date of the 1968 amendments. As to those projects, therefore, there can be no question as to the applicability of the statutory and regulatory provisions requiring state assurances and a formal plan of relocation.

[31] This case is thus unlike *Shannon* v. *United States Department of Housing and Urban Development*, C.A. 3, No. 18297, decided

party defendant to such proceedings;[32] nor do we believe that the class of complainants would be identical to the class represented by petitioners at the present time.[33]

In these circumstances, we submit that it would be inappropriate for this Court to adjudicate the complex issues originally raised by this case and which petitioners still argue.[33a] As long as any persons still remain to be displaced from the Triangle area, however, the case is technically not moot, and we cannot now know when such displacement will be completed. Accordingly, we set forth our reasons for believing that the actions of federal and state authorities here under attack complied with the 1968 amendments to the Federal-Aid Highway Act, and the regulations thereunder.

December 30, 1970, on which petitioners place some reliance (Pet. Br. 52). There, the issue relating to the execution and performance of a contract for rent supplement payments to tenants of a specific apartment project was raised in the complaint, notwithstanding that the apartment had not then been built (slip op. 2).

[32] In a suit relating solely to questions of adequate relocation housing, it is the state, and not the federal government, which bears the ultimate responsibility.

[33] The instant case is a class action brought on behalf of all persons who, at the time the suit was commenced, were residing within the interstate corridor in the Triangle area of Charleston, West Virginia (App. 130a–131a)—approximately 284 persons.

[33a] As we have indicated (*supra* n. 1), the Uniform Relocation Assistance Act of 1970 repealed the statutory provisions here under consideration. While certain provisions of the new Act contain language similar to that involved in this suit, there is sufficient dissimilarity to raise doubts whether a decision in this case, insofar as it bears on the construction of the repealed statute, would be controlling on the proper interpretation of the Uniform Relocation Assistance Act of 1970 (see n. 43 *infra*).

I. THE EVIDENCE SUPPORTS THE DISTRICT COURT'S FINDING THAT ADEQUATE RELOCATION HOUSING IS AVAILABLE ON AN OPEN RACIAL BASIS IN THE CHARLESTON AREA

A. Petitioners' constitutional claim rests upon factual assumptions that both courts below properly rejected. They contend (Pet. Br. 24–25) that the failure to assure Negro displacees, prior to their displacement, that adequate relocation housing is available in the Charleston area on a non-discriminatory basis violates the Equal Protection Clause of the Fourteenth Amendment.[24] The argument is premised on the sweeping statement that "construction of I–77 through the Charleston Triangle has had and will have the effect of displacing black and poor residents of the area and throwing them into a highly constricted, racially discriminatory housing market" (Pet. Br. 24).

Even if this were the case, the constitutional objection relates more appropriately to the government's approval in 1964 to route the highway through this area (cf. *Nashville I–40 Steering Committee* v. *Ellington*, 387 F. 2d. 179, 185 (C.A. 6), certiorari denied, 390 U.S. 921), a decision which petitioners are barred by laches from challenging (*supra*, p. 5). In any event petitioners have done no more than state an adequate claim on which relief can be granted (see *Norwalk*

[24] The record does not reflect what preliminary assurances were in fact made to the residents of the Triangle area. It does reveal that Mr. Colan, Director of the State Right of Way Division, met with Triangle Improvement Council in June 1965, and again in 1966 to discuss the relocation program, and thereafter, on at least two occasions with the Council president and others to discuss "how relocations would be handled" (App. 408a–409a).

CORE v. *Norwalk Redevelopment Agency*, 395 F. 2d 920, 929–930 (C.A. 2); *Arrington* v. *City of Fairfield, Alabama*, 414 F. 2d 687, 692–693 (C.A. 5)); they have not, however, proven their claim.

B. As earlier indicated (*supra*, p. 14), on November 6, 1967, the City of Charleston passed a local ordinance prohibiting, with limited exceptions (*supra*, n. 18), sales or rentals in the city housing market on a racially discriminatory basis.[35] There is nothing in this record to suggest, even inferentially, any significant non-compliance with that law; nor is there any indication that local authorities were having difficulty with its enforcement. Petitioners' analysis of the Charleston housing market does not discuss the post-ordinance period, and they concede that they never made a study of public, as distinguished from private, housing to determine the extent, if any, of racial discrimination (App. 344a, 391a–392a).

[35] While there was then a similar federal law (42 U.S.C. (Supp. V) 1982), it was uncertain whether it covered purely private discrimination in the sale or rental of real property, unaided by any governmental action, until this Court decided *Jones* v. *Mayer Co.*, 392 U.S. 409, in June 1968. *Jones* preceded the effective date of the statutory and regulatory provisions here in question by a full two months. Moreover, on April 11, 1968, Congress had enacted the Fair Housing Title (VIII) of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.*, prohibiting all discrimination, whether based on race or otherwise, in the sale or rental of housing. Thus, the amorphous "assurance" sought by petitioners in this case is that federal or state officials will uphold and enforce the existing law. Their failure *in fact* to do so may in certain circumstances violate the Equal Protection Clause; but their failure to *say* they are going to do so does not.

Instead, their major focus at trial was on the housing situation in Charleston almost eight years before this action was commenced. Their conclusions rested largely on information shown on a map (Pl. Ex. No. 23) prepared by their principal witness, Mr. Abeles, based exclusively on 1960 census figures (App. 304a, 317a). According to Mr. Abeles (App. 305a), "[w]ith the addition of other knowledge and from readings I have, this map would give a reasonably clear picture that the housing market in this city at the point from which these numbers were made was a restricted housing market."[36] Petitioners assume that this same situation still existed almost nine years later, more than a year after enactment of the open housing ordinance, based on a single telephone survey of about fifty private dwelling units within the Charleston area, only eight of which purportedly "would rent to black families" (App. 332a–333a):

[36] While Mr. Abeles relied in part on some later statistics, compiled between 1960–1966, and allegedly on some personal observations, in giving his views as to the general availability of adequate relocation housing in the Charleston area (App. 300a, 318a), he did not draw on these later figures to support his opinion that Negroes "would not enjoy the same—by any degree the same opportunities for finding relocation housing in the private sector" (App. 305a). In fact, the only other source for his opinions on racial discrimination was the April 1968 draft of the city Community Renewal Program (App. 233a), which, he stated, "goes into some detail to the specific problems of the black population of getting housing due to racial frictions and restrictions" (App. 304a). However, that draft (Pl. Ex. No. 14) deals essentially with the problems of racial discrimination in private housing well before the November 1967 city ordinance, and at the time of trial was "in the process of being revised because of changes that have been made in certain things" (App. 233a).

That survey, however, did not show that the remaining 42 owners discriminated on the basis of race. Rather, Miss Carolyn Tillman, a community organizer who made the phone calls at the behest of Triangle Improvement Council (App. 257a, 332a–332a), stated that "[t]he other homes were either too much rent per month *or* they wouldn't rent to black families *or* they were not large enough for families with children" (App. 334a; emphasis supplied).[37] Moreover, 28 of the dwellings in the survey had already been rented on the day Miss Tillman called (App. 334a), and apparently no effort was made to determine which, if any, of these had been let on a discriminatory basis. Consequently, the most that the survey shows is that 14 dwelling units were unavailable for rent by Negro families for one of the above three reasons. Moreover, as to the few of those which might actually have discriminated on the basis of race, the record is silent as to whether they were within the city ordinance exclusions (*supra* n. 18).

We do not suggest that there is no discrimination in sales and rentals of one-to-four family dwellings in the private sector of the housing market in Charleston (App. 392a). See also 42 U.S.C. 3603(b)(2). Indeed, Mr. Colan, Director of the State Right of Way Division, recognized the possibility of such discrimination. "The private room situation," he testified, "is a very

[37] In determining how many of the fifty dwellings were available for rent by residents of the Triangle area, Miss Tillman considered only those dwellings renting for less than $60 per month (App. 333a); she was not familiar with the rent supplement provisions of the 1968 Act (App. 340a).

delicate thing because each one has their own criteria for who they want living in their house" (App. 393a).[38] But he stated emphatically that otherwise he had been unable to "find any significant racial discrimination in Charleston" (*ibid.*), an assessment based on his personal experience in relocating approximately 2,000 persons in the area "in the last two years" (*ibid.*) and on his close working knowledge of the current state of the public and private housing market (App. 354a–362a, 392a). As to the public housing sector (App. 253a, 390a–391a), his statements has never been disputed in these proceedings (App. 392a). And, as the record shows (*supra*, pp. 15–16), at the time of trial public housing alone in Charleston was expected to have a turnover sufficient to supply appropriate replacement housing to all Triangle displacees (App. 102a, 105a–108a).[39]

On the basis of this evidence, the trial court properly concluded (App. 57a) "that adequate relocation housing, on an open racial basis" was available in the Charleston area. In affirming on the opinion of the district court, the court of appeals necessarily upheld that finding. Petitioners have shown nothing that would warrant this Court in taking the unusual step of overturning this factual determination of the two

[38] Mr. Colan stated that in determining whether there was sufficient private housing available, "[w]e consider the availability under the Charleston Open Housing Act [the city ordinance] and for such reasons we have eliminated, for example, the private room situation because it is very difficult to even rent a private room to anyone" (App. 392a).

[39] Petitioners' effort to discredit this evidence is discussed *infra*, pp. 46–49.

lower courts. Cf. *Graver Manufacturing Co.* v. *Linde Air Products Co.*, 336 U.S. 271, 275. It should not do so on the basis of an obsolete study prepared from 1960 census figures and a telephone survey which, if at all accurate, reflects no more than that there possibly existed some racial discrimination in Charleston by a few owners of private dwellings which might well have been exempted from the coverage of the open housing ordinance (see Pet. Br. 16 n. 46).

C. Accordingly, the character of the housing market in the Charleston area was not such that the state's implementation of its relocation program in that area necessarily resulted in discriminatory rental or sale practices for which the state could be held responsible. Individual instances of private discrimination based on race, even if unlawful (cf. *Jones* v. *Mayer Co.*, 392 U.S. 409), do "no violence to the Equal Protection Clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it." *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 722; *Turner* v. *City of Memphis*, 369 U.S. 350. There is nothing on this record which even begins to suggest such involvement.[40] To the contrary, as indicated above, both the City of Charleston and the Congress of the United States have enacted legislation designed to prevent and alleviate private discrimination in housing. There

[40] As pointed out by the trial court, petitioners "have specifically disavowed that there was any basic or specific racially discriminatory purpose on the part of defendants in the routing of I-77 or in the relocation of the displacees in that routing" (App. 58a).

is, consequently, no substantial constitutional issue in this case, and this Court need only determine whether the Department of Transportation correctly construed the 1968 statutory amendments, and its own regulations thereunder, as not requiring state officials to submit further assurances in the form of a formal relocation plan for the questioned highway projects.

B. STATE OFFICIALS WERE NOT REQUIRED BY STATUTE OR REGULATIONS TO SUBMIT FURTHER ASSURANCES IN THE FORM OF A FORMAL RELOCATION PLAN ON THESE PROJECTS

A. On August 23, 1968, the Federal-Aid Highway Act (72 Stat. 1146) was amended[41] to require (1) more comprehensive and meaningful state "assurances" (23 U.S.C. (Supp. V) 502) of an adequate relocation program (23 U.S.C. (Supp. V) 508) as a condition to obtaining the Secretary of Transportation's approval[42] for federal funding of a proposed highway project, and (2) an increase in the number, kinds and amounts of relocation assistance payments (23 U.S.C. (Supp. V) 505, 506, 507) for those persons to be dis-

[41] Section 37 of the Federal-Aid Highway Act of 1968, P.L. 90-495 (set out as a note to 23 U.S.C. 502), provided that the amendments would take effect immediately except that until July 1, 1970, sections 502, 505, 506, 507 and 508 "shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections." The proviso has reference primarily to the relocation payment provisions and is not pertinent here. West Virginia, by an amendment in its laws, was in fact able to comply fully on March 7, 1969. W. Va. Code (1970 Cum. Supp.) Ch. 17, Art. 2A, Sec. 20.

[42] Approval for federal funding of any proposed highway project on the Federal-aid Interstate system is obtained under 23 U.S.C. 106; similar approval for proposed projects on the Federal-aid secondary system is obtained under 23 U.S.C. 117.

placed from any highway project after the effective date of the 1968 Act (23 U.S.C. (Supp. V) 509). The legislative history shows that these provisions were needed primarily because general requirements of a similar nature under the 1962 Act (23 U.S.C. 133; *supra*, nn. 7–11) had not been effective "in providing adequate relocation assistance and just compensation to those displaced * * *." S. Rep. No. 1340, 90th Cong., 2d Sess., p. 6.

The new statute calls for "satisfactory assurances" from the state that it will afford to displacees of a federal-aid highway project three things: relocation payments, relocation assistance, and "decent, safe and sanitary" relocation housing (23 U.S.C. (Supp. V) 502). The exact form that these assurances were to take, and their precise content, were left to the Secretary (23 U.S.C. (Supp. V) 510(b)), who also was assigned the task of defining the prescribed housing standard (23 U.S.C. (Supp. V) 502(3)).

As we earlier indicated, the implementing regulations were issued on September 5, 1968, in the form of Instructional Memorandum 80–1–68 (hereinafter referred to as "IM"), effective as of August 23, 1968 (App. B 63–83, *infra*). In essence, they require that (a) detailed information be submitted in certain circumstances concerning the availability of adequate relocation housing on a non-discriminatory basis, (b) an assurance be given that "to the maximum extent practicable" no person will be displaced without at least 90 days prior written notice, and (c) a promise be made to comply with all relocation payment provisions. See IM, para. 5, *infra*, App. B 67–69. In addition, there

is a numbered paragraph outlining a comprehensive relocation planning program to be followed by the states and calling for submission to the federal division engineer, for his review and approval, of a detailed formal plan of relocation with respect to each proposed project. See IM, para. 7, *infra*, App. B 72–74. The Memorandum also sets forth the minimum requirements for "decent, safe and sanitary" housing. See IM, para. 13, *infra*, App. B 79–81.

B. In order to appreciate fully the nature of the present controversy, an understanding of basic procedures followed in constructing any portion of the federal-aid highway system seems essential. Briefly, the building of any section of federally-funded roadway (designated a "project") involves four successive stages. There is, at the outset, the "program" stage, during which a state desiring financial assistance is to "submit to the Secretary for his approval a program or programs of proposed projects for the utilization of the funds apportioned" for any fiscal year (23 U.S.C. 105). The Secretary's approval of any "program" does not bind the government to a contractual obligation.

Next is the "routing and engineering design" stage. During this period, the state selects the different project routes (23 U.S.C. 103(d)) and prepares, for the Secretary's review and approval, "such surveys, plans, specifications and estimates for each proposed project included in an approved program" as relate to the route location and design. Moreover, it is in this stage, prior to "such time as the final location is

approved" (IM, para. 7a, *infra*, App. B 73), that the state is required under the 1968 regulations to "make preliminary investigations" incident to planning for a relocation program. *Ibid.* Where the selected route involves "the bypassing of, or going through, any city, town, or village," the state must hold public hearings and consider "the economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community * * *" (23 U.S.C. (Supp. V) 128(a)).

If the Secretary is satisfied with the information he receives, he first approves the route location and thereafter the design as part of the approval under Section 106; even after such approvals, there is still no contractual obligation on the part of the government to expend funds for right-of-way acquisitions or project construction.

The "right-of-way acquisition" stage follows. By regulation, right-of-way surveys, plans and specifications are then filed with the federal government. *FHWA Policy and Procedure Memorandum* 20-5. Pursuant to the 1968 amendments (23 U.S.C. (Supp. V) 502), and paragraph 5 of the IM issued thereafter, the state must submit "satisfactory assurances" that it can provide prospective displacees with adequate relocation housing and payments. Also, under paragraph 7 of the IM, "prior to proceeding with right-of-way negotiations and/or construction," a state is now required to prepare a detailed plan of relocation "for review and approval by the division engineer" (*infra*,

App. B 73–74). If the division engineer is satisfied, authorization to purchase parcels of land within the project right-of-way is given under 23 U.S.C. 106, and the government is then contractually obligated to participate in such acquisitions; generally this authorization will cover the entire project area, but occasionally, as in the instant case (App. 230–231a), it may be a segment authorization, or even a parcel-by-parcel authorization (App. 230a).

It is during the right-of-way acquisition stage that a state is required to implement its relocation programs. First, adequate "decent, safe and sanitary" housing is located; then the parcels of land are purchased; finally, those to be displaced are moved. There is no set deadline. As amply demonstrated by the instant case, "no one is forced to move until they have these accommodations available" (App. 407a). While right-of-way clearance generally does not take place during the relocation process (see *FHWA Policy and Procedure Memorandum* 21–12), the demolition of vacant buildings may at this stage be authorized by the division engineer where he deems such action is necessary "in order to prevent vandalism, occupation by squatters, and in the interest of public health" (Pet. Br. App. 46).

Finally, there is the actual "construction" stage (*FHWA Policy and Procedure Memorandum* 21–7), which is to "be undertaken by the respective State highway departments or under their direct supervision" (23 U.S.C. 114). The construction of each project is generally to "be performed by contract awarded

by competitive bidding" (23 U.S.C. 112). It cannot commence without federal authorization from the division engineer. While this authorization is an approval under 23 U.S.C. 106, creating a contractual obligation by the federal government to participate in construction costs, it is not the Section 106 approval talked about in 23 U.S.C. (Supp. V) 502—that is, an approval "which will cause the displacement of any persons, business or farm operation." Construction authorization can be given only after persons in the area have been displaced pursuant to the earlier Section 106 approval in the right-of-way acquisition stage. This was made clear in a circular memorandum issued by the Department of Transportation on April 10, 1970 (*infra*, App. B 89), prohibiting the authorization of:

> * * * any phase of construction * * * which would require displacement of individuals or families, or permit the dislocation of individuals or families on any such project or on any project already authorized, until such time as the person being relocated has either by himself obtained and has the right of possession of adequate replacement housing or the State offers him adequate replacement housing which is available for immediate occupancy.

C. The instant case involves two separate highway "projects" in the West Virginia Interstate "program," both of which penetrate the Triangle area of Charleston (*supra*, pp. 6–7). On August 23, 1968, the date of the 1968 amendments, each was well into the third stage outlined above: the route location had been finally approved (App. 357a) and full authorization had been given for right-of-way acquisitions un-

der Section 106 (App. 199a, 229a–231a); parcels of land had been purchased (App. 143a–144a, 147a–148a) and a number of persons had already been displaced (App. 145a). By the time this action was commenced, more than 60 percent of the right-of-way in both Project A and Project B had been acquired and 1,314 of the combined total of 2,190 persons had relocated (*supra*, pp. 7–8, 12).

Under such circumstances, it is our position that the state "assurances" to be submitted under section 502 of the 1968 Act before "[t]he Secretary shall * * * approve any project under section 106 or section 117" (see n. 42 *supra*) were not required.[43] Indeed, the statutory language suggests that no "assurance" was necessary after August 31, 1964; for, while separate federal authorizations—relating to right-of-way ac-

[43] Petitioners, in their supplemental brief, make reference to the Uniform Relocation Assistance Act of 1970. To the extent that statute has any application to these proceedings, it fully supports our position. In Section 210 (Pet. Supp. Br. App. 6), the Act requires "satisfactory assurances" along identical lines to those prescribed in 23 U.S.C. (Supp. V) 502. Those assurances must be furnished by a state to the head of a federal agency, not prior to construction approval, but prior to approval of "any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in * * * displacement * * *"—in short, prior to Section 106 right-of-way acquisition approval under the Federal-Aid Highway Act.

Petitioners' reliance on Section 205(a) of the Uniform Relocation Assistance Act of 1970 is misplaced. That provision (Pet. Supp. Br. App. 4) deals only with programs and projects "undertaken by a Federal agency in any State." Here, the projects in question are being "undertaken" by the state with federal financial aid. See 23 U.S.C. 114. Accordingly, if any provision of the Act is applicable, it is Section 210 (see n. 47 *infra*).

quisitions and, later, commencement of construction—were at that time still to be obtained, the Secretary had then finally approved the route location under Section 106 (*supra*, p. 6). The Department of Transportation, however, does not take this view of the statute; instead, it applies the provision to "[a]ll Federal-aid highway projects authorized on or before August 23, 1968, on which individuals * * * have not been displaced." See IM, para. 2(b)(2), *infra*, App. B66. Thus, with respect to specific state assurances of an adequate relocation assistance program, the regulations provide that they will be required *except* "where authorization to acquire right-of-way or to commence construction has been given prior to" August 23, 1968. IM, para. 5b, *infra*, App. B69. Even where the "assurances" are not compelled, however, the state is still instructed to "pick up the sequence at whatever point it may be in the acquisition program" (IM, para. 5b, *infra*, App. B69) and provide relocation assistance to those not yet displaced. (App. 192a, 417a).

On the two projects here involved, authorization had been given and individuals displaced prior to the effective date of the 1968 statute and regulations. Mr. Saunders, the Division Right of Way Officer, testified that federal authorities had therefore concluded that the state was not required to submit the statutory assurances "because it was a going project" (App. 191a); as he explained, "we had authorized [right-of-way acquisitions] way back" and the state had already commenced its relocation assistance program (App. 192a).

Petitioners do not appear to be challenging this aspect of the administrative determination; they are silent with respect to the statutory "assurances." Rather, their attack centers on the failure of state officials to furnish to the division engineer a formal plan of relocation (Pet. Br. 30–32), a requirement not called for by the statute but appearing only in the Department of Transportation's regulations (IM, para. 7, *infra*, App. B 73–74). The submission of such a plan, however, is required "prior to proceeding with right-of-way negotiations and/or construction" (IM, para. 7b, *infra*, App. B 73), a time long since passed on each of these projects. Curiously, petitioners rely on the "and/or" reference in an attempt to create the very ambiguity it was designed to eliminate (Pet. Br. 33 n. 78). As they read the regulation, the requirement for a formal relocation plan need not be imposed upon the states until the project nears the "construction" stage. However, as we have pointed out (*supra* pp. 36–37), by that time there is no longer any need for a relocation plan. Thus, it was precisely to foreclose such an argument by the states that the Department chose to use the pervasive "and/or" reference; relocation plans under IM, para. 7b are to be furnished "prior to proceeding with right-of-way negotiations."

This point was made abundantly clear in an explanatory circular memorandum issued on February 12, 1969 (see *infra*, App. B 86–87). It instructed each "division engineer to carefully review the status of each project before issuing any additional authorizations to acquire right-of-way * * *." If he

finds "a substantial number of persons remain to be relocated *at any time an authorization is requested which would require such relocation,* it would seem that the division engineer would need to have the information required by paragraph 7b" (see App. B 87, *infra;* emphasis supplied). Here, however, as Mr. Saunders testified (App. 198a), no such request for "right of way authorization to acquire" needed to be made "on these two projects after the effective date of the law, August 23, 1968." Therefore, he was of the view (App. 226a–227a), as were the other state and federal officials who testified (App. 142a, 385a, 415a), that the requirement of a formal relocation plan was not applicable to these projects.

Petitioners attempt to read the circular memorandum of April 10, 1970 (App. B 88–89, *infra*) as suggesting a contrary conclusion. On its face, however, that directive relates only to the commencement of the final "construction" stage, when displacement procedures are all but completed. It does not compel the submission of "comprehensive relocation plans * * * before construction approval" (Pet. Br. 36), as petitioners argue. Rather, it instructs the division engineers not to authorize any "phase of construction" which would have the effect of displacing any person remaining in the right-of-way, "until such time as the person being relocated has either by himself obtained * * * adequate replacement housing" or the state is able to offer him such "housing which is available for immediate occupancy" (App. B 89, *infra*). It is undisputed that this circular, by its terms, is applicable to the instant projects "on which individuals or families

are still to be displaced as of May 1, 1970" (App. B88, *infra*). Cf. *Thorpe* v. *Housing Authority of City of Durham*, 393 U.S. 268.[44] But this does not conflict with, or alter the effect of, prior Department regulations relating to the submission by states of a formal relocation assistance plan early in the "right-of-way acquisition" stage of an already approved project.[45]

That policy had been under discussion within the Department of Transportation "since basically before the law was signed by the President" (App. 415a). It was the subject of numerous meetings among, and reflected the views of, "top highway officials" of the states and the Bureau of Public Roads (App. 415a–416a). Mr. Carpenter, one of the federal officials who

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[44] Pursuant to the April 10 directive, Under Secretary Beggs announced on November 6, 1970: "(3) Further construction involving the Triangle Area will be authorized only after the people now living within the right-of-way in that area have been relocated into adequate decent, safe and sanitary housing * * *" (Pet. Br. App. 45–46).

[45] We, therefore, do not agree with the interpretation which Judge Sobeloff, dissenting from the denial of a petition for rehearing *en banc*, gave to "the panel's view as I infer it to be" (App. 77a). In his opinion, "my brethren seem to think that the regulation, expressly recognizing the plaintiffs' rights under the 1968 amendments, has somehow eliminated the need for relief. Their position apparently is that there is no reason to suppose that the new policy will not be applied to the Triangle and, accordingly, appellants' claim is thus mooted, at least for the time being" (App. 77a–78a). There is, of course, no dispute that the April 10, 1970, circular applies to the two projects here in question, both within the Triangle and outside it (*supra*, n. 44). The court of appeals, however, affirmed on the opinion of the district court; apparently it saw nothing in the later circular which required a different result.

was instrumental in formulating the regulations and who actually assisted in writing "[t]he basic policy itself" in Washington (App. 416a), gave the following explanation at trial for the underlying rationale, (App. 417a):

> This basic problem did exist in every state in the Union. If they had to stop operations, back up and basically consider attempting to make a memorandum retroactive, if you tried to enforce all of these provisions of the IM on projects on which a substantial amount of work had already been done, it would have been unfair to the public to have stopped the work on that when they were expecting to get paid and you take your people off and start a relocation plan. Somewhere we have to stop the planning and start doing.

As he interpreted the regulation which he had helped to draft (App. 417a–418a), a relocation plan for these two projects "wasn't required" (App. 415a). When asked why, he responded: "The specific language of this IM and the attachments thereto preclude the necessity of a requirement for a relocation" plan (*ibid.*). And he added, "I have no reason to believe that this has been misinterpreted" (416a). Even assuming *arguendo* some ambiguity in the regulation, the guiding principle is that enunciated in *Bowles* v. *Seminole Rock Co.*, 325 U.S. 410, 413–414:

> Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. * * * But the ultimate criterion is the

> administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation. * * *

See also *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 276.

Nor can petitioners produce a different result by characterizing the question as one of the construction of a statute rather than a regulation. As we have shown (*supra*, p. 40), the statute requires no formal plan of relocation.[46] But even if it did, the administrative interpretation would still be determinative; it would involve "a contemporaneous construction of a statute by men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Udall* v. *Tallman*, 380 U.S. 1, 16; *Power Reactor Co.* v. *Electricians*, 367 U.S. 396, 408.

D. Petitioners contend, however, that not to require a formal plan of relocation here would "defeat the obvious intent of Congress" (Pet. Br. 29). Compare *Zuber* v. *Allen*, 396 U.S. 168. We cannot agree. Again the proper focus is on the realities of the situation, on the essential, uncontested fact that the state's relocation assistance program for each of these projects was already well under way on August 23, 1968 (*supra*, pp. 7–8, 12). As Mr. Saunders testified, to have suddenly stopped everything would have created

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[46] Similarly, the Uniform Relocation Assistance Act of 1970 (see n. 43, *supra*) contains no provision calling for submission by a state to the federal government of a formal plan of relocation. See Pet. Supp. Br. App.

"hardships for those people who [had] already gotten started towards buying new property" (App. 191a). It would, according to Mr. Colan (App. 386a), have entailed "taking the personnel off of helping the people to go back and write lengthy reports reporting data which was well known as a result of [the state's] continuing studies."

This is not what Congress intended when it passed the Federal-Aid Highway Act of 1968; the overriding concern was not with formalism. Instead, as stated in the "Declaration of policy" (23 U.S.C. (Supp. V) 501), Congress wished to achieve "the prompt and equitable relocation" of persons displaced by federally funded highways. As the evidence in this case demonstrates, that is precisely what was taking place on projects A and B in Charleston, notwithstanding the absence of a formalized plan to accompany the extensive relocation program.

Indeed, the state's central relocation office, situated in the Triangle area of Charleston (App. 214a–215a), had been affording to displacees on both projects substantially all the services now enumerated in 23 U.S.C. (Supp. V) 508 long before August 23, 1968 (see pp. 12–13, *supra*).[47] For two years, its right-of-way operations had been closely observed by the Division Right-of-Way Officer for the Bureau of Public Roads (App. 176a); its

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[47] Those same services are now enumerated in section 205(c) of the new Uniform Relocation Assistance Act of 1970 (Pet. Supp. Br. App. 5), and are required, under section 210 of the Act (see n. 43, *supra*), to be a part of a state's relocation assistance program before that state can obtain the Secretary's approval for any federal funding of a highway project.

progress with regard to relocations had been audited on a day-to-day basis (App. 211a), and some 125 replacement cases on these two projects had been carefully scrutinized by federal authorities (App. 210a). Mr. Saunders testified; "I don't believe we ever took exception to a single relocation" (App. 213a). On the basis of this experience, he concluded that the state could "relocate the people in the Triangle area and other areas" without difficulty (App. 176a). His superior, the Division Engineer for the West Virginia Division, agreed (App. 415a, 423a–424a). And see pp. 17–18, *supra*. That determination was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (5 U.S.C. (Supp. V) 706(2)(A)). See *Citizens to Preserve Overton Park* v. *Volpe*, No. 1066, this Term, decided March 2, 1971.[48]

Petitioners claim, however, that state and federal officials failed to make a proper assessment of the public and private housing market in Charleston. They rely

[48] Petitioners suggest that the court erred in relying largely on testimony of federal and state highway officials, rather than on an administrative record, in deciding that there was a rational basis for the federal determination that the state was here providing an adequate relocation assistance program. But the court was not reviewing a determination by the Secretary under 23 U.S.C. (Supp. V) 502; it specifically found that provision inapplicable. Rather, it was reviewing agency action under the earlier 1962 Act, which contained no specific requirements for the submission of written "assurances" and required no administrative record. In such circumstances, where no administrative record is available, the district court may hear testimony from officials involved in the challenged action. See *Citizens to Preserve Overton Park* v. *Volpe*, *supra*, slip op. 17; *Shaughnessy* v. *Accardi*, 349 U.S. 280; compare *United States* v. *Morgan*, 313 U.S. 409, 422.

primarily on the testimony of a city planner from New York City, Mr. Abeles, and the study he prepared from 1960 census figures (see pp. 13–14, *supra*). On the basis of a 2.7-percent effective vacancy rate (*supra*, n. 16) in the private housing market of Charleston in 1960 (App. 299a), and an estimated net decrease of 400 dwelling units between 1960 and 1966 (App. 300a), Mr. Abeles testified (App. 308a): "My opinion as far as what has happened in the past and with reason to project in the future, including building this highway and other projects, the total net effect will be very deleterious to people who will be affected by such public action." Particularly disturbing to him was the prospect of having the proposed Charleston Urban Renewal Program (App. 100a) commence before those to be displaced by the highway could be relocated (App. 323a–324a).

While a memorandum written in early 1968 (App. 425a–426a), suggesting (largely on the basis of anticipated urban renewal programs) an impending shortage of private relocation housing in Charleston, tended to support Mr. Abeles' prognosis, thereafter the relocation situation in the private market improved. The explanation was threefold: first, the availability of rental supplements under the 1968 amendments (App. 427a);[*] second, a delay in anticipated urban renewal

[*] Section 506 of the Act provides for a two-year payment of up to $1500.00 as a rental supplement. 23 U.S.C. (Supp. V) 506(b). Under this provision, each displaced tenant is entitled to the difference between the rent he was paying and the average cost of renting a place adequate for the size of his family meeting the decent, safe and sanitary standards (App. 371a). At the time of trial, the 166 tenants in the Triangle area were paying

programs;[50] and third, recent plant closings in the area causing "additional vacancies generally in the rental area" (App. 363a). A study undertaken by the State Road Commission in February 1969 (App. 99a–126a) indicated that about 80 dwelling units, with an average monthly rental of $90.00, were available in the private section of the housing market "on any given day" (App. 101a, 112a).[51] In addition, the study found that public housing alone in Charleston

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"an average rent between $45.00 and $50.00 a month" (App. 101a). "The average rent of available units on the private market [was] approximately $90.00 per month" as of February 1969. While, as petitioners suggest (Pet. Br. 49–50 n. 115), there are potential problems created for those who receive the rental supplement at the end of the two-year statutory period, that is a matter for Congress and not the courts. Under the Uniform Relocation Assistance Act of 1970, Congress has extended the two-year period to four years. Section 204; Pet. Supp. Br. App. 4.

[50] In February 1969, state highway officials concluded: "Based on past experience relocation for the highway will be completed or substantially completed prior to any significant displacement for the Urban Renewal project" (App. 100a). As earlier indicated (*supra* n. 23), that forecast has since been proven accurate. The urban renewal project will have a far greater impact on the Triangle area than the highway: it will displace about 1500 persons as compared to the 326 displaced by the highway (App. 100a).

[51] Mr. Colan, Director of the State Right of Way Division, explained how these units were selected (App. 396a): "We have a staff of ten people assigned full time to these two projects. In addition we make available regularly members of our staff to check housing. On one particular day we let twenty men spend the whole day and the next day examining housing that was available in the Charleston market." The "private room situation," not covered by the city open housing ordinance, was "eliminated" from the study (App. 392a).

had a sufficient turnover to supply replacement housing to all Triangle displacees (App. 102a, 105a–108a).

It is undisputed that this housing was "decent, safe, and sanitary" was available at a monthly rent of twenty percent of net family income (App. 254a), and was let on a non-discriminatory basis (App. 253a). Moreover, for Triangle displacees, who as a practical matter had a first priority on the vacant units (*supra*, pp. 15–16), the waiting period was only thirty to sixty days (App. 253a). Of course, as petitioners point out (Pet. Br. 16), this housing also was available to other qualifying persons[22] within the two highway projects who lived outside the Triangle area. However, at the time the February 1969 study was prepared, there were apparently "so few left to be relocated in that class that they [were] rather insignificant in the overall relocation" (App. 387a).

On this evidence, there was ample basis for the district court's conclusion that a sufficient number of units of decent, safe and sanitary replacement housing would "be available in the Charleston area for an orderly relocation of the displacees from the interstate highway" (App. 57a). Nothing that has happened since suggests otherwise. Indeed, it seems somewhat quixotic to be discussing the accuracy of projections on the likelihood of available replacement

[22] Families qualifying for public housing in Charleston had an average annual income of less than $5,000.00 (App. 426a). In the Triangle area, the average income was about $170.00 per month (App. 260a, 333a), or $2,040.00 per year.

housing for future relocations at a time after virtually all those relocations have taken place.

In their request for relief (Pet. Br. 50–52), petitioners appear to suggest that this Court should now order respondents to prepare a formal plan of relocation applying equally to those persons already displaced from the Triangle area and those few who still remain and to provide adequate housing for any displacees whose new housing is inadequate. Such relief, however, necessarily would require this Court to conclude both that such a plan was required by law and that, as a matter of fact, without it the state could not have provided adequate relocation housing in Charleston. For the reasons set forth above, we think it clear that there existed no legal requirement for a formal plan. The factual question was fully litigated at trial and decided against petitioners, and the court of appeals necessarily approved that finding when it affirmed on the opinion of the district court. There is therefore neither legal nor factual basis for a formal relocation plan in this case.[52] If there are any persons

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[52] Petitioners suggest that the federal respondents be required under the Federal-Aid Highway Act of 1970 (Pub. L. 91-605, 23 U.S.C. 510) to authorize "the construction, rehabilitation or purchase of housing for dislocatees" from the two subject projects (Pet. Br. 52). However, that statute provides for such authorization "where a proposed project * * * cannot proceed to actual construction because replacement housing is not available and cannot otherwise be made available * * *." Here, the evidence shows ample availability of replacement housing in the Charleston area. Even assuming *arguendo* that some persons have been relocated into substandard housing, a point we dispute, that in itself does not necessarily indicate any shortage of adequate replacement housing in the area.

displaced from these highway projects, either within or without the Triangle area, who have been relocated into substandard housing, they can appropriately seek legal redress in separate proceedings.

CONCLUSION

For the reasons stated, the writ of certiorari should be dismissed or the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX A

1968 HIGHWAY RELOCATION AMENDMENTS

(23 U.S.C. § 501 *et seq.*)

(Pub. L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 830)

§ 501. Declaration of policy

Congress hereby declares that the prompt and equitable relocation and reestablishment of persons, businesses, farmers, and nonprofit organizations displaced as a result of the Federal highway programs and the construction of Federal-aid highways is necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Therefore, Congress determines that relocation payments and advisory assistance should be provided to all persons so displaced in accordance with the provisions of this title.

§ 502. Assurances of adequate relocation assistance program

The Secretary shall not approve any project under section 106 or section 117 of this title which will cause the displacement of any person, business, or farm operation unless he receives satisfactory assurances from the State highway department that—

(1) fair and reasonable relocation and other payments shall be afforded to displaced persons in accordance with sections 505, 506, and 507 of this title;

(2) relocation assistance programs offering the services described in section 508 of this title shall be afforded to displaced persons; and

(3) within a reasonable period of time prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the Secretary, equal in number to the number of and available to such displaced families and individuals and reasonably accessible to their places of employment.

§ 503. Administration of relocation assistance program

In order to prevent unnecessary expenses and duplication of functions, a State highway department may make relocation payments or provide relocation assistance or otherwise carry out the functions required under this chapter by utilizing the facilities, personnel, and services of any other Federal, State, or local governmental agency having an established organization for conducting relocation assistance programs.

§ 504. Federal reimbursement

(a) The Secretary shall approve, as a part of the cost of construction of a project under any Federal-aid highway program which he administers, the cost of providing the payments and services described in section 502, except that notwithstanding any other law, the Federal share of the first $25,000 of such payments to any person, on account of any real property acquisition or displacement occurring prior to July 1, 1970, shall be increased to 100 per centum of such cost.

(b) Any project agreement with a State highway department executed before the date of enactment of this chapter with respect to property which has not been acquired as of the date of enactment of this chapter under any such program shall be amended to include the cost of providing the payments and services described in section 502 with respect to such property.

§ 505. Relocation payments

(a) Payments for actual expenses.—Upon application approved by the State agency, a person displaced by any highway project approved under section 106 or section 117 of this title may elect to receive actual reasonable expenses in moving himself, his family, his business, or his farm operation, including personal property.

(b) Optional payments—dwellings.—Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive—

(1) a moving expense allowance, determined according to a schedule established by the Secretary, not to exceed $200; and

(2) a dislocation allowance of $100.

(c) Optional payments—businesses and farm operations.—Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this section in lieu of the payment authorized by subsection (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or $5,000, whichever is the lesser. In the case of a business, no payment shall be made under this subsection unless the State

agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not part of a commercial enterprise having at least one other establishment, not being acquired by the State or by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such two-year period.

§ 506. Replacement housing

(a) In addition to amounts otherwise authorized by this title, the State agency shall make a payment to the owner of real property acquired for a project which is improved by a single-, two-, or three-family dwelling actually owned and occupied by the owner for not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment, not to exceed $5,000, shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the Secretary, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market. Such payment shall be made only to a dis-

placed owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired for the project. No such payment shall be required or included as a project cost under section 504 of this title if the owner-occupant receives a payment required by the State law of eminent domain which is determined by the Secretary to have substantially the same purpose and effect as this section and to be part of the cost of the project for which Federal financial assistance is available.

(b) In addition to amounts otherwise authorized by this title, the State agency shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (a) of this section which dwelling was actually and lawfully occupied by such individual or family for not less than 90 days prior to the initiation of negotiations for acquisition of such property. Such payment, not to exceed $1,500, shall be the amount which is necessary to enable such person to lease or rent for a period not to exceed 2 years, or to make the down payment on the purchase of, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

§ 507. Expenses incidental to transfer of property.

(a) In addition to amounts otherwise authorized by this title, the State shall reimburse the owner of real property acquired for a project for reasonable and necessary expenses incurred for (1) recording fees, transfer taxes, and similar expenses incidental to conveying such property; (2) penalty costs for prepayment of any mortgage entered into in good faith en-

cumbering such real property if such mortgage is on record or has been filed for record under applicable State law on the date of final approval by the State of the location of such project; and (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the State, or the effective date of the possession of such real property by the State, whichever is earlier.

(b) No payment received under this chapter shall be considered as income for the purposes of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

§ 508. Relocation services

(a) Each State shall provide a relocation advisory assistance program which shall include such measures, facilities, or services as may be necessary or appropriate in order—

(1) to determine the needs, if any, of displaced families, individuals, business concerns, and farm operators for relocation assistance;

(2) to assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, housing meeting the standards established by the Secretary for decent, safe, and sanitary dwellings, equal in number to the number of, and available to, such displaced families and individuals and reasonably accessible to their places of employment;

(3) to assist owners of displaced businesses and displaced farm operators in obtaining and

becoming established in suitable locations; and

(4) to supply information concerning the Federal Housing Administration home acquisition program under section 221(d)(2) of the National Housing Act, the small business disaster loan program under section 7(b)(3) of the Small Business Act, and other State or Federal programs offering assistance to displaced persons.

(b) Nothing in this chapter shall be construed to prohibit any person from exercising any right or remedy available to him under State law with respect to any action of a State agency in carrying out this chapter.

§ 509. Relocation assistance programs on Federal highway projects

Notwithstanding any other provision of law, on and after the effective date of this title any Federal agency which acquires real property for use in connection with a highway project authorized by section 107 and chapter 2 of this title or any other Federal law shall, in accordance with regulations issued by the Secretary, provide the payments and services described in sections 502, 505, 506, 507, and 508 of this title. When real property is acquired by a State or local governmental agency for such a Federal project for purposes of this chapter, the acquisition shall be deemed an acquisition by the Federal agency having authority over such project.

§ 510. Authority of the Secretary

(a) To carry into effect the provisions of this chapter, the Secretary is authorized to make such rules and regulations as he may determine to be necessary to assure—

(1) that the payments authorized by this chapter shall be fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the State agency making such determination.

(b) The Secretary may make such other rules and regulations consistent with the provisions of this chapter as he deems necessary or appropriate to carry out this chapter.

§ 311. Definitions

As used in this chapter—

(1) The term "person" means—

(A) any individual, partnership, corporation, or association which is the owner of a business;

(B) any owner, part owner, tenant, or sharecropper who operates a farm;

(C) an individual who is the head of a family; or

(D) an individual not a member of a family.

(2) The term "family" means two or more individuals living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship.

(3) The term "displaced person" means any person who moves from real property on or after the effective date of this chapter as a result of the acquisition or reasonable expectation of acquisition of such real property, which

is subsequently acquired, in whole or in part, for a Federal-aid highway, or as the result of the acquisition for a Federal-aid highway of other real property on which such person conducts a business or farm operation.

(4) The term "business" means any lawful activity conducted primarily—

(A) for the purchase and resale, manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public; or

(C) by a nonprofit organization.

(5) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(6) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government and any corporation wholly owned by the Government.

(7) The term "State agency" means a State highway department or any agency designated by a State highway department to administer the relocation assistance program authorized by this chapter.

Section 37 of Pub. L. 90–495 provided that:

This Act and the amendments made by this Act shall take effect on the date of its enactment except that until July 1, 1970, sections 502, 505, 506, 507, and 508 of title 23, United States Code as added by this Act, shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1970, such sections shall

be completely applicable to all States. Section 133 of title 23, United States Code, shall not apply to any State if sections 502, 505, 506, 507, and 508 of title 23, United States Code, are applicable in that State, and effective July 1, 1970, such section 133 is repealed.

FEDERAL-AID HIGHWAY ACT OF 1970

(Pub. L. 91-605, Dec. 31, 1970)

CONSTRUCTION OF REPLACEMENT HOUSING

SEC. 117. (a) Sections 510 and 511 of title 23, United States Code including all references thereto are hereby renumbered as sections 511 and 512 respectively.

(b) Chapter 5 of title 23, United States Code, is amended by inserting immediately after section 509 the following new section:

"§ 510. Construction of replacement housing

"(a) The Secretary may approve as a part of the cost of construction of any project on any Federal-aid system the cost of (A) constructing new housing, (B) acquiring existing housing, (C) rehabilitating existing housing, and (D) relocating existing housing, as replacement housing for individuals and families where a proposed project on the Federal-aid system cannot proceed to actual construction because replacement housing is not available and cannot otherwise be made available as required by section 502 of this title. For the purposes of this subsection the term 'housing' includes all appurtenances thereto.

"(b) State highway departments shall, wherever practicable, utilize the services of State or local governmental housing agencies in carrying out this section."

(c) The analysis of chapter 5 of title 28, United States Code, is amended by adding after

"509. Relocation assistance programs on Federal highway projects."

the following:

"510. Construction of replacement housing."

(d) The definition of the term "construction" in section 101(a) of title 23, United States Code, is amended to read as follows:

"The term 'construction' means the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the Coast and Geodetic Survey in the Department of commerce), acquisition of rights-of-way, relocation assistance, elimination of hazards of railway grade crossings, acquisition of replacement housing sites, and acquisition, and rehabilitation, relocation, and construction of replacement housing."

EFFECTIVE DATE OF RELOCATION PROVISIONS

SEC. 120. Section 37 of the Federal-Aid Highway Act of 1968 is amended to read as follows:

"EFFECTIVE DATE

"SEC. 37. (a) Except as otherwise provided in subsection (b) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment, except that until July 1, 1970, sections 502, 505, 506, 507,

and 508 of title 23, United States Code, as added by this Act, shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. Except as otherwise provided in subsection (b) of this section, after July 1, 1970, such sections shall be completely applicable to all States. Section 133 of title 23, United States Code, shall not apply to any State if sections 502, 505, 506, 507, and 508 of title 23, United States Code, are applicable in that State, and effective July 1, 1970, such section 133 is repealed, except as otherwise provided in subsection (b) of this section.

"(b) In the case of any State (1) which is required to amend its constitution to comply with sections 502, 505, 506, 507, and 508 of title 23, United States Code, and (2) which cannot submit the required constitutional amendment for ratification prior to July 1, 1970, the date of July 1, 1970, contained in subsection (a) of this section shall be extended to July 1, 1972."

APPENDIX B

PROCEDURE & POLICY DIRECTIVES

U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
Bureau of Public Roads
Washington, D.C. 20591

SEPTEMBER 5, 1968.

INSTRUCTIONAL MEMORANDUM 80-1-68
34-10

SUBJECT: Relocation Assistance and Payments—Interim Operating Procedures (RCS 34-01-03)
(B/B 04-R-2211)

There are enclosed Interim Operating Procedures covering the administration of the Highway Relocation Assistance Program established by Chapter 5 of Title 23, U.S.C.

These procedures supersede paragraph 3 of PPM 80-5 and will be incorporated in a new Policy and Procedure Memorandum after a period of operation thereunder.

/s/ F. C. TURNER,
F. C. Turner,
Director of Public Roads.

/s/ LOWELL K. BRIDWELL,
Lowell K. Bridwell,
Federal Highway Administrator.

[Including Amendments of Paragraphs 5a(2), 5a(5), 7b(2) and 9c(2) dated October 2, 1968 and November 5, 1968]

Interim Operating Procedures

Relocation Assistance and Payments

1. PURPOSE

In accordance with Chapter 5 of Title 23, U.S.C., this memorandum prescribes policies and procedures relating to the following:

a. Administration of the relocation program and the provision of relocation payments and services to individuals, families, businesses, and farm operators displaced by Federal-aid highway construction;

b. Eligibility for reimbursement of relocation payments and costs of services by State and State designated agencies; and

c. Relocation payment records and relocation advisory assistance reports.

2. EFFECTIVE DATE AND APPLICABILITY

a. The provisions of this memorandum are effective August 23, 1968, and the payments and services described herein shall be provided by the State to the extent that such State is able to comply herewith under its laws. After July 1, 1970, such payments and services shall be provided by all States.

b. The provisions of this memorandum are applicable to the following:

(1) All Federal-aid highway projects authorized after August 23, 1968, involving rights-of-way which are occupied by an individual, family, business, farm operator, or nonprofit organization.

(2) All Federal-aid highway projects authorized on or before August 23, 1968, on which individuals, families, businesses, farm operations, and nonprofit organizations have not been displaced.

(3) Rights-of-way acquired without Federal participation upon which the State intends to construct a Federal-aid project from which as of August 23, 1968, individuals, families, business, farm operations, and nonprofit organizations have not been displaced.

c. The relocation payments and services described in this memorandum shall be provided by any Federal agency which acquires property for highway projects authorized under Chapters 1 and 2 of Title 23, U.S.C. When real property is acquired by a State or local governmental agency for such a Federal project, the acquisition shall be deemed to be an acquisition by the Federal agency having authority over such project.

3. AUTHORITY

Statutory authorty for this memorandum is set forth in Chapter 5 of Title 23, U.S.C. (23 U.S.C. 501 *et seq.*).

4. PROGRAMMING

* * *

b. Any ~~project~~ agreement with a State which was executed on or before August 23, 1968, and which requires the use of property not acquired as of that date shall be amended to include the cost of providing the payments and services described in this memorandum. Any number of projects may be amended in a single action with each project identified. Form PR–37, Project Status Record, must be prepared for each project as required by Volume 22, Chapter V, Administrative Manual. Attach a copy of the modified agreement to each PR–37.

5. ASSURANCES OF ADEQUATE RELOCATION ASSISTANCE PROGRAM.

a. No State highway department shall be authorized to proceed with any phase of any project which will

cause the displacement of any person or any construction project concerning any right-of-way acquired by the State without Federal participation and coming within the provisions of paragraph 2b(3) above, until it has furnished satisfactory assurances to the extent State law permits, that:

(1) Relocation payments and services were or will be provided as set forth in paragraphs 6–10 of this memorandum.

(2) In the event housing available to persons without regard to race, color, religion or national origin will not be available within a reasonable period of time prior to displacement as provided in paragraph 7 of this memorandum, the State shall provide a detailed statement specifying the respects in which such assurance cannot be furnished, the extent to which such housing will be available prior to displacement, the period of time prior to displacement when that housing will become available and an estimate of the additional time within which such housing will become available to the extent that it can be reasonably accomplished.

(3) The public was or will be adequately informed of the relocation payments and services which will be available, as set forth in paragraph 12 of this memorandum.

(4) No person lawfully occupying the real property shall be required to move from his home, farm or business location without at least 90 days written notice of the intended vacation date from the State or political subdivision having responsibility for such acquisition. This provision must be carried out to the maximum extent practicable and exceptions should be made only in the case of very unusual conditions. Such assurance can be furnished on a Statewide

basis or set forth in Point 31 of the State's statement of organization and procedures.

(5) The State's relocation program is realistic and is adequate to provide orderly, timely, and efficient relocation of displaced individuals and families to decent, safe, and sanitary housing available to persons without regard to race, color, religion or national origin with minimum hardship on those affected.

b. The above assurances are not required where authorization to acquire right-of-way or to commence construction has been given prior to the issuance of this memorandum. The state will pick up the sequence at whatever point it may be in the acquisition program at the time of issuance of this memorandum.

c. The State's assurances shall be accompanied by a statement in which it specifies the provisions of this memorandum with which it is unable under its laws to comply in whole or in part. In the event a State maintains that it is legally unable to comply fully with one or more of the provisions of this memorandum, its statement shall be supported by an opinion of the chief legal officer of the highway department in which he discusses the legal issues raised and cites reasons and authorities in support of his conclusion for each representation of legal inability to comply.

6. Administration of the Relocation Assistance Program

a. In order to prevent unnecessary expenses and duplication of functions, the State highway department may make relocation payments or provide relocation assistance or otherwise carry out the functions described in this memorandum by utilizing the facilities, personnel, and services of any other Federal, State, or local governmental agency having an

established organization for conducting relocation assistance programs.

b. Where a State highway department elects to have the relocation payments and services required under this PPM administered by another Federal, State, or local agency, it shall enter into a written contract or agreement to that effect with the agency it selects. Such contract or agreement shall be subject to the approval of the division engineer and shall obligate the agency to perform the services and make the payments in accordance with Chapter 5 of Title 23, U.S.C., and the regulations and procedures of the Bureau of Public Roads. The contract shall also provide that the records required by paragraph 15 of this memorandum will be retained by the agency administering the relocation program for a period of not less than three years after payment of the final voucher with respect to the particular project, or that these records will be turned over to the State highway department. In the event these records are turned over to the highway department, that department will retain them for a like period. These records shall be made available for inspection by representatives of the Federal Government of any reasonable hour. Where the contract is with a public agency administering another Federal grant program, the contract shall specify the financial responsibilities of each to finance the relocation program required by this memorandum.

c. The State highway department shall, under Point 31 of its policy and procedural statement, identify the office in the State highway department which has Statewide responsibility for implementing the relocation program, the director of that office, and the State agency which will administer the relocation program.

It shall also include the estimated number and job titles of personnel in the State highway department and the State agency who have direct responsibility for providing relocating payments and services.

d. The organization and procedures of the State agency which administers the relocation program shall provide as a minimum that:

(1) Each right-of-way project shall have assigned to it one or more individuals whose primary responsibility is to provide relocation assistance. These individuals may have responsibility for more than one project where reasonable.

(2) A local subsidiary office will be established which is reasonably convenient to public transportation or within walking distance of each project when the division engineer determines, after consultation with the State, that the volume of work or the needs of the displaced persons are such as to justify the establishment of such an office. These offices shall be open during hours convenient to the persons to be displaced, including at least one and preferably more evenings per week if necessary.

(3) Regardless of whether a local office is established, personal contact will be made with each person as defined in paragraph 17, to be displaced to explain the relocation payments and assistance which are available and to assist in completing any applications required. If such contact cannot be made, the State agency shall furnish documentation to show that reasonable efforts have been made to achieve this contact.

(4) Relocation officials shall maintain personal contact with and shall exchange information with other agencies rendering services useful to displaced persons. Such agencies include social welfare agencies, urban renewal agencies, redevelopment authorities,

public housing authorities, the Federal Housing Administration, Veterans Administration and Small Business Administration. Personal contact shall also be maintained with local sources of information on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors. Subscriptions may be maintained for multiple listing services, apartment directory services, neighborhood and metropolitan newspapers, etc.

(5) The local relocation office shall maintain and provide:

(a) lists of replacement dwellings available to persons without regard to race, color, religion or national origin drawn from various sources, suitable in price, size and condition for displaced persons to the extent they are available;

(b) current data for such costs as security deposits for utilities, damages, and leases, closing costs, typical downpayments, and interest rates and terms;

(c) maps showing the location of schools, parks, playgrounds, shopping and public transportation routes in the area, and

(d) schedules and costs of public transportation.

(6) Other recommended information to be provided by relocation offices includes copies of the State's brochure explaining its relocation program, local ordinances pertaining to housing, building codes, and open housing; FHA and VA booklets of information on inspecting and evaluating replacement housing; and consumer education literature on housing, shelter costs and family budgeting.

7. Development of Relocation Program Plan

The planning for the relocation program shall be accomplished in stages:

a. Conceptual Stage. A project will be considered to be in this stage until such time as the final location is approved. At this stage the tenant is not to be disturbed in any way. The cost incurred in connection with securing this information is chargeable to preliminary engineering. Prior to the completion of this stage and prior to the public hearing, the State shall make preliminary investigations which will furnish the following information for each of the various alternative locations given final consideration.

(1) Approximate number of individuals, families, businesses, farms, and nonprofit organizations that would be displaced.

(2) The probable availability of decent, safe, and sanitary replacement housing within the financial means of those displaced.

(3) The basis upon which the above findings were made and a statement relative thereto by the State to the Bureau of Public Roads.

b. Right-of-Way Acquisition and/or Construction Stage.

The State highway department, prior to proceeding with right-of-way negotiations and/or construction shall furnish the following information for review and approval by the division engineer:

(1) The method and procedures by which the needs of every individual to be displaced will be evaluated and correlated with available decent, safe, and sanitary housing at reasonable rents or prices and readily accessible to his place of employment.

(2) The method and procedure by which the State will assure an inventory of currently available comparable housing available to persons without regard to race, color, religion or national origin which is decent, safe, and sanitary, including type of building,

state of repair, number of rooms, needs of the person or family being displaced (based on standards outlined in paragraph 13a), type of neighborhood, proximity of public transportation and commercial shopping areas, and distance to any pertinent social institutions, such as church, community facilities, etc. The use of maps, plats, charts, etc., would be useful at this stage.

(3) An analysis relating to the characteristics of the inventories so as to develop a relocation plan which will:

(a) outline the various relocation problems disclosed by the above survey;

(b) provide an analysis of Federal, State and community programs affecting the availability of housing currently in operation in the project area;

(c) provide detailed information on concurrent displacement and relocation by other governmental agencies or private concerns;

(d) provide an analysis of the problems involved and the method of operation to resolve and relocate the relocatees;

(e) estimate the amount of leadtime required and demonstrate its adequency to carry out a timely, orderly and humane relocation program;

(f) assure no person lawfully occupying real property shall be required to move without at least 90 days written notice; and

(g) furnish the names of the agency or agencies, if other than the State, which will provide the relocation assistance including an analysis of their present workload and ability to perform and the estimated number and job titles of relocation personnel servicing the project.

9. REPLACEMENT HOUSING

a. General Provisions

In addition to other payments authorized by this memorandum, individuals and families displaced from dwellings on real property acquired for a Federal-aid project are entitled to supplementary payments in accordance with this paragraph. The State highway department or the agency administering the relocation program shall develop procedures to implement this paragraph, which shall be submitted to the division engineer for his approval. Such procedures shall be designed to assure that the availability of these payments is brought to the attention of all eligible persons as provided in paragraphs 6 and 12 of this memorandum.

* * * * *

c. Payment to owner-occupants displaced from dwellings who do not qualify for payments under 9(b) and individuals or families who are occupying rental or leased space.

In addition to the moving cost payments to which they are entitled under the provisions of paragraph 8c of this memorandum, owner-occupants who do not qualify for payment under paragraph 9b and tenants who are displaced by a highway project are entitled to the following payments if they have lawfully occupied the dwelling taken for at least 90 days prior to the initiation of negotiations for such property.

(1) An individual or family renting a dwelling unit taken for a project is entitled to a payment to enable him to rent or purchase decent, safe, and sanitary housing. The amount of the payment shall be determined by subtracting 24 times the amount which the displaced individual or family paid in rent for the

last month immediately before being required to move, or 24 times the economic rent as established by the State's appraisal process for his dwelling unit, whichever is the lesser, from the amount necessary to rent a decent, safe, and sanitary dwelling for the next two years, but in no event shall this amount exceed $1,500. Where rent is being paid to a State or political subdivision thereof economic rent shall be used in determining the amount of payment to which the relocatee is entitled.

(2) An owner-occupant who is not eligible for payment because he had not actually owned and occupied his dwelling for at least one year prior to the initiation of the negotiation for the acquisition of that property by the State or has elected not to purchase a new property shall be entitled to the following payment: A sum equal to the difference, if any, between the cost of renting for the next two years a decent, safe, and sanitary dwelling adequate to accommodate him and his family in an area not generally less desirable in regard to public utilities and commercial facilities than the area from which he was displaced and 12 percent of the acquisition price of the property taken, but in no event may this payment exceed $1,500 or the amount which the owner-occupant would have received had he been eligible for a payment under paragraph 9b, whichever is the lesser. This may be used as a rent supplement or for a downpayment on the purchase of a dwelling.

* * * * *

g. Hardship cases

In cases of extreme hardship or other similar extenuating circumstances, exceptions to the decent, safe, and sanitary characteristics of replacement housing may be permitted in particular cases and the displaced individual or family still qualify for

a payment under this paragraph. Such exceptions will only be made with the written concurrence of the Regional Federal Highway Administrator.

11. APPEALS

a. An applicant for a payment under paragraphs 8, 9, or 10 of this memorandum shall be notified promptly in writing concerning his eligibility for the payment claimed; the amount, if any, he is entitled to receive; and the time and manner in which such payment will be made. Such notification shall also inform the applicant of his right to appeal and the procedures therefor, in the event the applicant is dissatisfied with the initial ruling on his application for such payments.

b. The head of the State agency shall establish procedures, consistent with the applicable State law, for reviewing appeals under this memorandum. Those procedures shall provide, at the minimum, that any person taking such an appeal shall be given (1) full opportunity to be heard and (2) a prompt decision giving reasons in support of the result reached.

c. The State highway department shall submit to the division engineer under Point 31 of its policy and procedural statement the procedure which has been established for review of determinations under paragraphs 8, 9, and 10 of this memorandum.

12. PUBLIC INFORMATION

In order to assure that the public has adequate knowledge of the relocation program, the State highway department shall include with requests for authorizations to proceed on projects causing displacement a statement that it has or will take the following steps:

a. The relocation program described in paragraphs 6 through 11 of this memorandum has been discussed at all public hearings required by 23 U.S. Code 128 and the PPM's implementing that section. The State shall prepare a brochure describing its relocation program and distribute the same without cost at all public hearings and to all other individuals and organizations as appropriate. The brochure shall state where copies of any State regulations implementing the relocation assistance program can be obtained.

b. The State agency shall provide full and adequate public notice of the relocation payments to be made and services to be rendered. Such public notice shall include the utilization of local newspapers, radio, and television stations (with particular emphasis on those which are read or listened to by the residents on the project) and local meetings for dissemination of news releases, advertisements, announcements and the like.

c. The State agency shall prepare and furnish each individual, family, business, and farm operator to be displaced by the project a written description of the (1) location assistance payments and services available; (2) the eligibility requirements and procedures for obtaining these payments and services; and (3) the right to appeal and procedure for appealing to the head of the State agency or the official designated to act for him. The above information shall be furnished by means of personal contact with those to be displaced unless an alternative method is approved by the division engineer. This information shall be furnished simultaneously with the initiation of negotiations for the property involved, and to tenants not later than 15 days after a contract for the purchase of property involved has been entered into. In no event shall such notice be less than 90 days prior to

the date the tenant will be required to move. The individual furnishing this information shall document the file to that effect.

13. STANDARDS FOR DECENT, SAFE AND SANITARY HOUSING

a. A decent, safe, and sanitary dwelling is one which meets all of the following minimum requirements:

(1) Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similiar ordinances or regulations applicable to the property in question.

(2) Has a continuing and adequate supply of potable safe water.

(3) Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and a sewage disposal system. A stove and refrigerator in good operating condition shall be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances, or custom the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.

(4) Has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees in the living area under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where such is not normally included in new housing.

(5) Has a bathroom, well lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of

hot and cold running water, and a flush water closet, all in good working order and properly connected to a sewage disposal system.

(6) Has provision for artificial lighting for each room.

(7) Is structurally sound, in good repair and adequately maintained.

(8) Each building used for dwelling purposes shall have two safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multi-dwelling building must have access either directly or through a common corridor to two means of egress to open space at ground level. In buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(9) Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes, and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, and unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

b. Rental of sleeping rooms. The standards for decent, safe, and sanitary housing as applied to the rental of sleeping rooms shall include the minimum requirements contained in subparagraphs a(1), (4), (6), (7) and (8) of this paragraph and the following:

(1) At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(2). Lavatory and toilet facilities that provide privacy including a door that can be locked if such facilities are separate from the room.

(e) In lieu of the standards listed in this paragraph the agency providing the relocation assistance described in the PPM may submit for approval by the Director of Public Roads a local housing code by means of which the decent, safe, and sanitary nature of replacement housing for a project is to be judged. Any code so submitted shall be reasonably comparable to the list of standards incorporated in this paragraph.

d. The Director of Public Roads may approve exceptions to the standards in this paragraph where unusual conditions exist.

17. DEFINITIONS

As used in this PPM

c. Displaced Person

The term "displaced person" means any person who moves from real property on or after the effective date of this memorandum as a result of the acquisition or reasonable expectation of acquisition of such real property which is subsequently acquired, in whole or in part, for a Federal-aid highway, or as the result of the acquisition for a Federal-aid highway or other real property on which such person conducts a business or farm operation. A person who moves from real property which is subsequently acquired for a Federal-aid highway as a result of the "reasonable expectation of acquisition of such real property" is one who moves from such property (1) after notification by the State highway department that the property is to be acquired for a project, or after the location of the highway has been definitely established

and approved by the Bureau of Public Roads and (2) within 12 months before the property is scheduled to be taken by the State;

* * * * *

f. *Federal Agency*

The term "Federal agency" means any department, agency or instrumentality in the executive branch of the government and any corporation wholly owned by the government.

g. *State Agency*.

The term "State agency" means a State highway department or any agency designated by a State highway department to administer the relocation assistance program authorized by Chapter 5, Title 23, U.S.C.

h. *Displacement*

The vacating by the eligible person of real property after the happening of any one of the following events shall be deemed to be a displacement as a result of the acquisition or clearance of right-of-way for or construction of a Federal-aid highway project:

(1) The State highway department or political subdivision becomes entitled to possession of the real property pursuant to an agreement or a court order in a condemnation proceeding instituted for the purpose of acquiring title.

(2) Title to the real property is conveyed to the State highway department or political subdivision by the owner thereof.

(3) A binding contract for the purchase of the real property is entered into by the State highway department or political subdivision and the owner of such real property, if the real property is not occupied by another eligible person prior to acquisition of title or right of possession.

(4) Public Roads authorizes the State to proceed with the relocation prior to actual acquisition of title or possession of the real property by the State highway department, or political subdivision.

(5) Any other move from real property subsequently acquired for a Federal-aid highway, which takes place as a result of the reasonable expectation that the property will be acquired for the highway, shall be deemed a displacement caused by the highway project for purposes of this PPM.

* * * * *

U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
Bureau of Public Roads
Washington, D.C. 20591

DECEMBER 26, 1968.

CIRCULAR MEMORANDUM TO: Regional Federal Highway Administrators and Division Engineers.

FROM: J. A. Swanson, Director of Right-of-Way and 34-10 Location Washington, D.C. s/ John A. Swanson.

SUBJECT: Relocation Procedures.

A question has arisen as to whether it is necessary for a State to furnish all of the information required by paragraph 7b of IM 80-1-68 if the State's legal opinion and assurances indicate that the State cannot under present State law conform to the requirements of the 1968 Act relative to making replacement housing payments to enable displaced persons to move into decent, safe and sanitary housing.

Under such circumstances the State cannot reasonably be expected to furnish all of the information required by paragraph 7b. The State should, however, survey the available housing and have information relative thereto accessible to the relocatees in accordance with the requirements of paragraph 6d(5). Under paragraph 7b(3) the division engineer should insist that the State furnish an analysis of the reloca-

tion problems and possible solutions in sufficient detail to enable him to determine the advisability of proceeding with the project and to assure that no relocatee will be required to move unless there is satisfactory replacement housing available to him. The State should, of course, make every effort that it can under existing law to see that the displacee is relocated in decent, safe and sanitary housing.

When he is satisfied that conditions exist which will result in fair and equitable treatment of the relocatees the division engineer may authorize negotiations and/or construction even though the State cannot make the payments to place the relocatees in decent, safe and sanitary housing.

U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
Bureau of Public Roads
Washington, D.C. 20591

FEBRUARY 12, 1969.

CIRCULAR MEMORANDUM TO:
Regional Federal Highway
Administrators and Division
Engineers.

FROM: J. A. Swanson, Director of Right-of-Way and
34-10 Location Washington, D.C. s/ John A.
Swanson.

SUBJECT: Relocation Procedures—Going Projects.

Paragraphs 2 (b)(2) and (3) of IM 80-1-68 state that its provisions are applicable to all active Federal-aid projects and to all other active projects upon which the State later intends to construct a Federal-aid project where there remain individuals families, businesses, farm operations, and non-profit organizations which will be displaced.

In accomplishing the planning for the relocation program required under paragraph 7. the State should undertake such planning on all active projects to the extent that it is reasonable and proper. Each such project, undoubtedly will involve a different set of circumstances and conditions. It, therefore, will be necessary for the division engineer to carefully review the status of each project before issuing any addi-

tional authorizations to acquire right-of-way or to authorize construction on a project for which right of way was acquired after August 23, 1968, irrespective of the source of funds utilized for such acquisition, to assure himself that the State has or will make the necessary relocations without undue hardship to the relocatees. If a major portion of the relocations have previously been accomplished very little good would result from going through the conceptual stage study. However, if a substantial number of persons remain to be relocated at any time an authorization is requested which would require such relocation, it would seem that the division engineer would need to have the information required by paragraph 7b. Some variation may be permitted by the division engineer when the circumstances warrant.

It should always be borne in mind that regardless of the information furnished at this stage of the project it is the responsibility of the State to furnish relocation assistance, and payments where authorized by State law, in accordance with the requirements of the law and the Im. At no time should a relocatee be forced into housing less desirable than that from which he was required to move and to the extent possible under State law all relocations should be made to decent, safe and sanitary dwellings.

U.S. DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
Bureau of Public Roads
Washington, D.C. 20591

APRIL 10, 1970.

CIRCULAR MEMORANDUM TO: Regional Federal Highway Administrators and Division Engineers.

FROM: John A. Swanson, Associate Director
34—10 for Right-of-Way and Location
Washington, D.C.

SUBJECT: Relocation Assistance—Availability of Replacement Housing (Supersedes White Circular Memorandum dated March 27, 1970).

This memorandum is applicable to the following:

a. All Federal-aid or any other highway projects financed in whole or in part with Federal-aid highway funds or other Federal funds authorized on or after May 1, 1970, involving rights-of-way which are occupied by an individual or family.

b. All Federal-aid or any other highway project financed in whole or in part with Federal-aid highway funds or other Federal funds authorized prior to May 1, 1970, on which individuals or families are still to be displaced as of May 1, 1970.

The division engineer shall not authorize any phase of construction (clearance of right-of-way regardless of how performed is considered to be a construction phase insofar as this memorandum is concerned) which would require the displacement of individuals or families, or permit the dislocation of individuals or families on any such project or on any project already authorized, until such time as the person being relocated has either by himself obtained and has the right of possession of adequate replacement housing or the State offers him adequate replacement housing which is available for immediate occupancy.

Such replacement housing shall be:

a. Fair housing—open to all persons regardless of race, color, religion, sex, or national origin.

b. In areas not generally less desirable in regard to:

1. Public utilities
2. Public and commercial facilities

c. Available at rents or prices within the financial means of the families and individuals displaced.

d. Decent, safe and sanitary.

e. Reasonably accessible to the displacees' places of employment.

f. Adequate to accommodate the displacee.

The applicable PPM's and IM's are being revised to conform to the above policy.

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